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Agriculture

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PARTS 210 TO 299
Revised as of January 1, 1986

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Agriculture

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PARTS 210 TO 299

Revised as of January 1, 1986

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Table of Contents

Page

Explanation v

Title 7:

Subtitle B—Regulations of the Department of Agriculture (Continued):

Chapter II—Food and Nutrition Service, Department of Agriculture 5

Finding Aids:

Table of CFR Titles and Chapters 703

Alphabetical List of Agencies Appearing in the CFR 717

Redesignation Table 725

List of CFR Sections Affected 727

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Cite this Code CFR

thus: 7 CFR 210.1

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

THIS TITLE

Title 7—AGRICULTURE is composed of sixteen volumes. The parts in these volumes are arranged in the following order: Parts 0-45, Parts 46-51, Part 52, Parts 53-209, Parts 210-299, Parts 300-399, Parts 400-699, Parts 700-899, Parts 900-999, Parts 1000-1059, Parts 1060-1119, Parts 1120-1199, Parts 1200-1499, Parts 1500-1899, Parts 1900-1944, and Part 1945 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation, are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the volume containing Parts 900-999. All marketing agreements and orders for milk appear in the three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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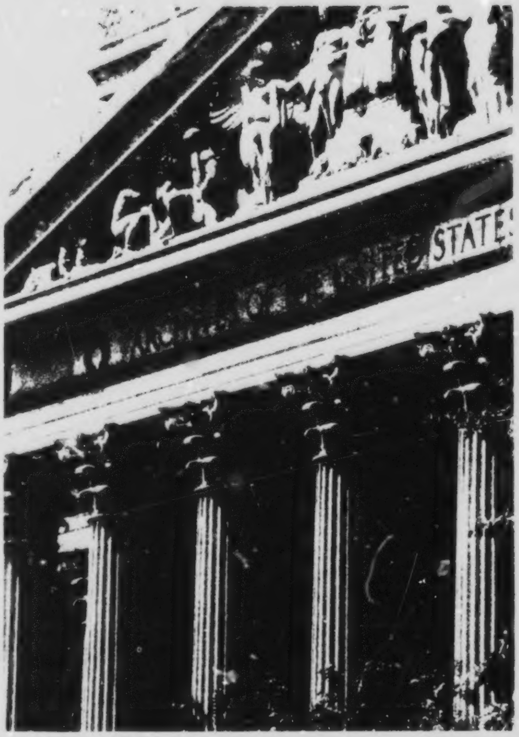

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Title 7—Agriculture

(This book contains Parts 210 to 299)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE (Continued):

Part

CHAPTER II—Food and Nutrition Service, Department of Agriculture 210

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Subtitle B—Regulations of the Department of Agriculture (Continued)

BEST COPY AVAILABLE

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CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

Part *Page*
210 National school lunch program 7
215 Special milk program for children 43
220 School breakfast program 57
225 Summer food service program 78
226 Child care food program 118
227 Nutrition education and training program 168
235 State administrative expense funds 178
240 Cash in lieu of donated foods 188
245 Determining eligibility for free and reduced price meals and free milk in schools 194
246 Special supplemental food program for women, infants and children 208
247 Commodity supplemental food program 254

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

250 Donation of foods for use in the United States, its territories and possessions and areas under its jurisdiction 274
251 Temporary emergency food assistance program for fiscal years 1984 and 1985 304
252 National commodity processing program 307
253 Administration of the food distribution program for households on Indian resevations 314
254 Administration of the food distribution program for Indian households in Oklahoma 339

SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM

271 General information and definitions 342
272 Requirements for participating State agencies 356
273 Certification of eligible households 385
274 Issuance and use of food coupons 521
275 Performance reporting system 540

BEST COPY AVAILABLE

Part		*Page*
276	State agency liabilities and Federal sanctions	581
277	Payments of certain administrative costs of State agencies	588
278	Participation of retail food stores, wholesale food concerns and insured financial institutions	620
279	Administrative and judicial review—food retailers and food wholesalers	633
280	Emergency food assistance for victims of disasters.	637
281	Administration of the food stamp program on Indian reservations	637
282	Demonstration, research, and evaluation projects..	644
284	Provision of a nutrition assistance program for the Commonwealth of the Northern Mariana Islands (CNMI)	691
285	Provision of a nutrition assistance grant for the Commonwealth of Puerto Rico	693

SUBCHAPTER D—GENERAL REGULATIONS

295	Availability of information and records to the public	697
296—299	[Reserved]	

BEST COPY AVAILABLE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Sec.
210.1 General purpose and scope.
210.2 Definitions.
210.3 Administration.
210.4 Payment to States and FNSROs.
210.5 Method of payment to States.
210.5a Transfer of funds.
210.6 Matching of funds.
210.7 Use of funds.
210.8 Requirements for participation.
210.8a Food service management companies.
210.9 Free and reduced price lunches.
210.9a Student, parent, and community involvement.
210.10 Requirements for lunches.
210.11 Reimbursement payments.
210.12 Effective date for reimbursement.
210.13 Reimbursement procedure.
210.14 Special responsibilities of State agencies.
210.15 Review of net cash resources.
210.15b Competitive food services.
210.16 Claims against School Food Authorities.
210.17 Management evaluations and audits.
210.18 Prohibitions.
210.19 Suspension, termination and grant closeout procedures.
210.19a Procurement standards.
210.20 State Food Distribution Advisory Councils.
210.21 Program information.
210.22 Information collection/recordkeeping—OMB assigned control numbers.

APPENDIX A—ALTERNATE FOODS FOR MEALS
APPENDIX B—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE
APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 2-12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751-1760, 1779, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part see 41 FR 19198, May 11, 1976 and 44 FR 48156, Aug. 17, 1979.

§ 210.1 General purpose and scope.

(a) Section 2 of the National School Lunch Act, as amended, states: "It is hereby declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school-lunch programs."

(b) In furtherance of these objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall also coordinate the school's health-education activities with the formation of good eating habits in the lunchroom, to the end that participating children will gain a full understanding of the relationship between proper eating and good health.

(c) The Act authorizes the payment of funds to the States for general and special cash assistance and also authorizes donations of foods acquired by the Department. This part announces the policies and prescribes the regulations with respect to payment of general and special cash assistance. Parts 240 and 250 announce the policies and prescribe the regulations with respect to food donations and cash in lieu thereof.

(Sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a))

[35 FR 753, Jan. 20, 1970, as amended at 47 FR 15981, Apr. 13, 1982]

§ 210.2 Definitions.

For the purpose of this part the term:

(a) "Act" means the National School Lunch Act, as amended.

(b) "AIMS" means the Assessment, Improvement and Monitoring System. This is a management improvement system used in the National School Lunch Program and the Commodity School Program.

(b-1) "AIMS audits" means on-site evaluations of all School Food Authorities participating in the National School Lunch Program or Commoditiy School Program, by State auditors or State contracted auditors once every two years, with a minimum of 33⅓ percent of all School Food Authorities being reviewed in the first year of the first two year AIMS cycle, for compliance with AIMS Performance Standards 1 through 4, and which are conducted in accordance with USDA's audit guide or an audit guide approved by FNS and USDA's Office of the Inspector General.

(b-2) "AIMS error tolerance level" means the degree of error of an AIMS performance standard which if exceeded by a reviewed School Food Authority triggers a second AIMS review in all large School Food Authorities and in 25% of small School Food Authorities.

(b-3) "AIMS Performance Standards" means the following four standards which measure compliance with existing regulations:

(1) Within the School Food Authority, each child's application for free and reduced price meals is correctly approved or denied in accordance with the applicable provisions of Part 245;

(2) The numbers of free and reduced price meals claimed for reimbursement by each school for any review period are, in each case, less than or equal to the number of children in that school corrrectly approved for free and reduced price meals, respectively for the review period, times the days of operation for the review period;

(3) The system for counting and recording meal totals for paid, free and reduced price meals claimed for reimbursement at both the School Food Authority and school levels yields correct claims; and

(4) Meals claimed for reimbursement within the School Food Authority contain food components as required by regulations.

(b-4) "AIMS reviews" means on-site evaluations of all School Food Authorities participating in the National School Lunch Program or Commodity School Program once every four years by the State agency or State auditors with at least 20 percent of all School Food Authorities reviewed in each of the first two years of the first four year cycle, for compliance with the AIMS Performance Standards, and follow-up reviews as required.

(c) "CND" means the Child Nutrition Division, Food and Nutrition Service of the Department.

(c-1) "Child" means either: (1) In schools as defined in § 210.2(o)(1), a student of high school grade or under as determined by the State educational agency, including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped or (2) in schools as defined in § 210.2(o)(2) and (3), a person under 21 chronological years of age.

(c-2) "Commodity school" means a school that does not participate in the National School Lunch Program under this part but which operates a nonprofit lunch program under agreement with the State agency or FNSRO as provided for in § 210.8(e) and receives foods donated under Part 250 of this chapter, or foods donated under Part 250 and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under Part 240 of this chapter for processing and handling the foods.

(c-3) "Competitive foods" means any foods sold in competition with the National School Lunch Program to children in food service areas during the lunch periods.

(d) [Reserved]

(e) "Department" means the U.S. Department of Agriculture.

(e-1) "Distributing agency" means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to Part 250 of this chapter.

(f) "Fiscal year" means the period of 12 calendar months beginning July 1, 1975, and ending June 30, 1976; the period beginning July 1, 1976 and ending September 30, 1976; and the period of 12 calendar months beginning October 1, 1976 and each October 1 of any calendar year thereafter and ending with September 30 of the following calendar year.

(g) "FNS" means the Food and Nutrition Service of the Department.

(h) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department.

(h-1) "Foods of minimal nutritional value" means: (1) In the case of artificially sweetened foods, a food which provides less than 5 percent of the USRDA for each of eight specified nutrients per serving; (2) in the case of all other foods, a food which provides less than 5 percent of the USRDA for each of eight specified nutrients per 100 calories *and* less than 5 percent of the USRDA for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are: protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron. Categories of foods of minimal nutritional value are listed in Appendix B of this part.

(h-2) "Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by the School Food Authority to manage any aspect of the school food service.

(h-3) "Free lunch" means a lunch for which neither the child nor any member of his family pays or is required to work in the school or in the school's lunch program.

(h-4) "Infant cereal" means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

(h-5) "Infant formula" means any iron-fortified infant formula intended for dietary use solely as a food for normal, healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(h-6) "Large School Food Authority" means, in any State: (1) The two largest School Food Authorities that participate in the National School Lunch or Commodity School Programs and have enrollments of 2,000 students or more each; and (2) all other School Food Authorities that participate in the National School Lunch or Commodity School Programs and have enrollments of 40,000 students or more each.

(h-7) "Long-term care facility" means any hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

(h-8) "Lunch" means a meal which meets the lunch pattern for specified age groups of children as designated in § 210.10.

(h-9) "Lunches eligible for special cash assistance" means free and reduced price lunches served in a participating school under the eligibility criteria of the School Food Authority approved by the State agency, or FNSRO where applicable.

(i) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(i-1) "National School Lunch Program" means the program under which general cash-for-food assistance and special cash assistance are made available to schools pursuant to this part.

(i-2) "Net cash resources" means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

(j) "Nonprofit school food service" means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

(k) "Nonprofit" when applied to schools or institutions eligible for the Program means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

(l) "OA" means the Office of Audit of the Department.

(l-1) "OI" means the Office of Investigation of the Department.

(m) [Reserved]

(n) "Program" means the National School Lunch Program and commodity school programs.

(n-1) "Reduced price lunch" means a lunch which meets all of the following criteria: (1) The price shall be less than the full price of the lunch; (2) the price shall be 40 cents or lower; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's lunch program.

(n-2) "Reimbursement" means financial assistance paid or payable to participating schools for lunches meeting the requirements of § 210.10, served to eligible children at rates assigned by the State agency, or FNSRO where applicable. The term "reimbursement" also includes financial assistance made available through advances to School Food Authorities.

(n-3) "Revenue" when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

(o) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding $1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

(2) With the exception of residential summer camps which participate in Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(p) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program therein.

(p-1) "School year" means the period July 1 to June 30 of each year.

(q) "Secretary" means the Secretary of Agriculture.

(q-1) "Senior high school students" means students: (1) Of a high school grade level as determined by State and local educational agencies, and (2) enrolled in a school as defined in paragraph (o)(1) of this section.

(q-2) "Small School Food Authority" means, in any State, a School Food Authority that participates in the National School Lunch or Commodity School Program and is not a large School Food Authority.

(r) "State" means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(s) "State agency" means: (1) The State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as defined in § 210.2(o)(2) of this part.

(t) "State educational agency" means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(u) "State Food Distribution Advisory Council" means a group of not less than five representatives, excluding ex officio representatives, of schools participating in the lunch program in the State that meet and advise the State agency with respect to the needs of schools concerning the manner of selection and distribution of commodity assistance for the school lunch program.

(v) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and

(2) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds $1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(w) "Special needs children" means children who are emotionally, mentally or physically handicapped.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a); sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751))

[35 FR 753, Jan. 20, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 210.2, see the List of CFR Sections Affected in the Findings Aids section of this volume.

§ 210.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration.

(b) Within the States, responsibility for the administration of the Program in schools, as defined in § 210.2(o) (1) and (o) (3), shall be in the State educational agency, except that FNSRO shall administer the Program with respect to nonprofit private schools, as defined in § 210.2(o)(1), of any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; Provided, however, that FNSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FNS administration since October 1, 1980 unless the administration of the Program to such private schools is assumed by a State agency.

(b-1) Within the States, responsibility for the administration of the Program in schools, as defined in § 210.2(o)(2), shall be in the State educational agency or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools; *Provided, how-*

ever, That FNSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and *Provided, further,* That FNSRO shall also administer the Program in all other such schools which have been under continuous FNS administration since October 1, 1980 unless the administration of the Program to such schools is assumed by a State agency.

(b-2) References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program.

(c) Each State Agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part.

(Secs. 804, 816 and 817, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[35 FR 753, Jan. 20, 1970, as amended at 41 FR 19198, May 11, 1976; Amdt. 50, 47 FR 14132, Apr. 2, 1982]

§ 210.4 Payments to States and FNSROs.

(a) *Schools participating in the National School Lunch Program.* To the extent funds are available, the Secretary shall make general assistance payments under Section 4 of the Act to each State agency for lunches served to children under the Program except in commodity schools. Subject to § 210.14(g)(2), the total of these payments for each State for any fiscal year shall be the product of: The total number of lunches served under the Program from October 1 to September 30, multiplied by the applicable national payment rates. Lunches for which payment is given must meet the nutritional requirements as specified in § 210.10. To the extent donated foods are available, the Secretary will provide each State agency with commodities yearly, as provided in § 250.4(b) of Part 250 of this chapter.

(b) *Commodity schools.* To the extent commodities are available, the Secretary shall provide commodities to each State agency for lunches served to children in all commodity schools under agreements with the State agency or FNSRO where applicable. The total value of these commodities is provided for in § 250.4(b) of Part 250 of this chapter. Of this value, a commodity school may elect to receive in cash up to 5 cents per lunch for commodity processing and handling. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.14(g)(2). Lunches for which assistance is given must meet the nutritional requirements specifed in § 210.10.

(c) *Special assistance:* To the extent funds are available, the Secretary shall make special assistance payments under section 11 of the Act to each State agency for lunches served free or at a reduced price to eligible children under the Program. Subject to § 210.14(g)(2), the total of these payments for each State for any fiscal year shall be calculated as follows:

(1) Obtain the total number of lunches served free to eligible children during the fiscal year for the periods October 1 to June 30 and July 1 to September 30.

(2) Multiply these totals by the applicable special assistance payment rates for free lunches.

(3) Obtain the total number of lunches served at a reduced price to eligible children during the fiscal year for the periods October 1 to June 30 and July 1 to September 30.

(4) Multiply these totals by the applicable special assistance payment rates for reduced price lunches.

(5) Add the results obtained in paragraphs (c) (2) and (4) of this section.

(d) *Announcement of payments:* On approximately July 1 of each year, the Secretary shall announce the minimum rate for commodities and the payment rates for general and special assistance.

(Sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a); Pub. L. 97-370, 96 Stat. 1806)

[47 FR 15981, Apr. 13, 1982, as amended by Amdt. 62, 49 FR 18985, May 4, 1984]

§ 210.5 Method of payment to States.

(a) Funds to be paid to any State for general cash-for-food assistance or special cash assistance may be made available by means of Letters of Credit

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issued by FNS in favor of the State agency. The State agency shall:

(1) Obtain funds needed for reimbursement to School Food Authorities through presentation by designated State officials of an approved form in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (2) submit requests for funds only at such times and in such amounts, as will permit prompt payment of claims or authorized advances; and (3) use the funds received from such requests without delay for the purpose for which drawn. FNS may, at its option, reimburse a State agency by Treasury Check. FNS shall pay by Treasury Check with funds available in settlement of a valid claim if payment for that claim cannot be made within the grant closeout period specified in § 210.19(a).

(b) The State agency shall release to FNS any Federal funds made available to it under the Program which are unobligated at the end of each fiscal year. Any such funds shall remain available to FNS for the purpose of the Program until expended. Release of funds by the State agency shall be made as soon as practicable, but in any event not later than 30 days following demand by FNSRO, and shall be reflected by a related adjustment in the State agency's Letter of Credit.

(c) All Federal funds to be paid to any State in place of commodities shall be made available as provided in Part 240 of this chapter.

(Sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a))

[40 FR 30918, July 24, 1975, as amended at 41 FR 19198, May 11, 1976; 45 FR 64084, Sept. 26, 1980; 47 FR 15981, Apr. 13, 1982]

§ 210.5a Transfer of funds.

A State agency may request FNS to approve the transfer of funds paid to it for any fiscal year under the Act and the Child Nutrition Act of 1966, as amended, among the programs authorized under such acts. Such request shall be accompanied by a justification showing how such transfers will better accomplish the purposes of such acts. If the transfer is approved by FNS, related payments of funds and letters of credit shall be amended by FNS accordingly.

(Sec. 812, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1759a))

[35 FR 14062, Sept. 4, 1970, as amended at 38 FR 35476, Dec. 28, 1973; 41 FR 19199, May 11, 1976; Amdt. 52, 47 FR 18563, Apr. 30, 1982]

§ 210.6 Matching of funds.

(a) *State revenue matching.* For each school year beginning July 1, 1981, the amount of State revenues (excluding State revenues derived from the operation of the Program) appropriated or used specifically for Program purposes by each State (other than any State revenues expended for salaries and administrative expenses of the Program at the State level) shall not be less than 30 percent of the funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980. *Provided, however,* That if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to non-public schools shall be required to match general cash-for-food assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver.* Beginning July 1, 1980, American Samoa and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicable revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year:

(1) State revenues disbursed by the State agency to School Food Authorities for Program purposes, including revenue disbursed in nonprofit private schools where the State administers the Program in such schools;

(2) State revenues made available to School Food Authorities and transferred by the School Food Authorities to the nonprofit school food service accounts or otherwise expended by the School Food Authorities in connection with the nonprofit school food service programs; and

(3) State revenues used to finance the costs (other than State salaries or other State administrative costs) of: (i) Local Program supervision; (ii) operating the Program in participating schools; and (iii) the intrastate distribution of foods donated under Part 250 of this chapter to schools participating in the Program.

(e) *Distribution of matching revenues.* All State revenues made available under paragraph (a) of this section shall be disbursed to School Food Authorities participating in the Program, except as provided for under paragraph (b) of this section. Determinations of the practicability of distribution may be made with respect to a class of School Food Authorities as well as with respect to individual School Food Authorities.

(f) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

(g) *Reports.* S/A's shall demonstrate that the required amount of State revenues have been expended in connection with the Program during any school year, based upon reports to be submitted by the State agency at the close of such school year.

(h) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash-for-food assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

(Sec. 601, Pub. L. 96-206, 94 Stat. 90 (48 U.S.C. 1469a); Pub. L. 96-499, secs. 201 and 204, 94 Stat. 2599; secs. 804, 816, 817 and 819, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785))

[36 FR 14301, Aug. 4, 1971, as amended at Amdt. 50, 47 FR 14132, Apr. 2, 1982; Amdt. 56, 48 FR 194, Jan. 4, 1983]

§ 210.7 Use of funds.

(a) Federal funds made available under the Program shall be used by State agencies, or FNSROs where applicable, to reimburse or make advance payment to School Food Authorities in connection with lunches served to children in accordance with the provisions of this part. However, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special developmental projects an amount up to 1 per centum of the funds earned in any fiscal year under the Program. Advance payments to School Food Authorities may be made at such times and in such amounts as are necessary to meet current fiscal obligations. All Federal funds paid to any State in place of commodities, whether shortfall payments or funds for processing and handling donated foods in commodity schools, shall be used as provided in Part 240 of this chapter.

(b) Revenues received by the nonprofit school food service in any School Food Authority shall be used only for the operation or improvement of such food service: *Provided, however,* That such revenues shall not be used to purchase land or buildings or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency, or FNS where applicable under § 210.14(a-1) of this part.

(c) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall: (1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or (2) if such funds, assets, or

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property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(d) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (c) of this section.

(Sec. 10, Pub. L. 89642 (80 Stat. 889); 44 U.S.C. 3506; sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a); sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773, and 1757))

[40 FR 30918, July 24, 1975, as amended at 41 FR 19199, May 11, 1976; 44 FR 37897, June 29, 1979; 47 FR 745, Jan. 7, 1982; 47 FR 15981, Apr. 13, 1982; 47 FR 31374, July 26, 1982; 48 FR 40196, Sept. 6, 1983]

§ 210.8 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FNSRO for any school in which it desires to operate the National School Lunch Program and for any school which it desires to become a commodity school. The school food authority shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free and reduced price policy statement in accordance with Part 245 of this chapter.

(b) Applications must provide the State agency, or FNSRO where applicable, with sufficient information to determine eligibility.

(c)—(d) [Reserved]

(e) The State Agency, or FNSRO where applicable, shall enter into a written agreement with each School Food Authority. In School Food Authorities with both schools which participate in the National School Lunch Program and commodity schools, one agreement may apply to both types of schools. This agreement shall provide that the School Food Authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in § 210.7(b) and the limitations on any competitive school food service as set forth in § 210.15b of this part;

(2) Limit its net cash resources to an amount that does not exceed three months average expenditures for its nonprofit school food service; or such other amount as may be approved by the State agency, or FNSRO where applicable;

(3) Serve lunches which meet the minimum requirements prescribed in § 210.10 during a period designated as the lunch period by the School Food Authority;

(4) Price the lunch as a unit;

(5) Supply lunches without cost or at reduced price to all children who are determined by the school food authority to be unable to pay the full price thereof in accordance with the free and reduced price policy statement approved under Part 245 of this chapter;

(6) Make no discrimination against any child because of his inability to pay the full price of the lunch in accordance with such approved free and reduced price policy statement;

(7) Claim reimbursement at the assigned rates only for lunches served in accordance with the agreement;

(8) Submit Claims for Reimbursement in accordance with § 210.13 of this part and procedures established by the State agency, or FNSRO where applicable;

(9) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(10) Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State Agency or the department;

(11) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(12) Maintain necessary facilities for storing, preparing and serving food;

(13) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(14) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FNS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(15) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15);

(16) Retain the individual applications for free and reduced price lunches submitted by families for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(17) Enter into an agreement to receive donated foods as required by § 350.6(b) of this chapter;

(18) Maintain files of currently approved and denied (i) free and (ii) reduced price applications, respectively. If applications are maintained at the School Food Authority level, they shall be readily retrievable by school.

(f) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758), sec. 813, Pub. L. 97-35; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622, 42 U.S.C. 1751; Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759)

[35 FR 755, Jan. 20, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 210.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 210.8a Food service management companies.

(a) Any School Food Authority (including a State agency acting in the capacity of a School Food Authority) may contract with a food service management company to manage its feeding operation in one or more of its schools. Any School Food Authority contracting with a food service management company shall adhere to the procurement standards set forth in § 210.19a. A School Food Authority that employs a food service management company shall remain responsible for insuring that the food service operation is in conformance with its agreement under the Program and shall monitor the food service operation through periodic on-site visitations. The School Food Authority shall retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals. The School Food Authority shall maintain applicable health certification and be assured that all State and local regulations are being met by a food service management company preparing or serving meals at a School Food Authority facility. Contracts that permit all receipts and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" contracts are prohibited. However, contracts which provide for management fees established on a per-meal basis are allowed.

(b) The School Food Authority shall adhere to, and include in any contractual agreement with a food service management company for the management of the program, all the requirements set forth in this section. Such contractual agreements shall expressly provide as a minimum that:

(1) The food service management company shall maintain such records as the School Food Authority will need to support its claim under this part, and shall report thereon to the School Food Authority promptly at the end of each month, at a minimum. Such records shall be available, for a period of 3 years from the date of receipt of final payment under the con-

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tract, for inspection and audit by representatives of the State agency, the Department, and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the three year period as long as required for the resolution of the issues raised by the audit;

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract;

(3) No payment shall be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the School Food Authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, weight, ingredients, formulation, etc. The Department shall provide guidance to assist in the development of specifications.

(c) Any School Food Authority contracting with a food service management company shall establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(d) The contract between a School Food Authority and a food service management company shall be of a duration of no longer than one year; and options for the yearly renewal of a contract may not exceed two additional years. All contracts will include a termination clause whereby either party may cancel for cause with 60-day notification.

(e) School Food Authorities shall, in addition to the procurement requirements specified in § 210.19a, adhere to the following when contracting with food service management companies:

(1) The invitation to bid or request for proposal shall contain a 21-day cycle menu to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a School Food Authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu be developed and submitted by each food service management company which intends to submit a bid or proposal to the School Food Authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the School Food Authority;

(2) Any invitation to bid or request for proposal shall indicate that nonperformance shall subject the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The School Food Authority shall indicate these sanctions in accordance with the procurement provision stated in § 210.19(n)(1).

(f) Any federally donated commodities received by the School Food Authority and made available to the food service management company shall accrue only to the benefit of the School Food Authority's nonprofit school food service and shall be utilized therein.

(Sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[43 FR 60860, Dec. 29, 1978, as amended at 47 FR 31374, July 20, 1982; 48 FR 40196, Sept. 6, 1983]

§ 210.9 Free and reduced price lunches.

The determination of children to whom free and reduced price lunches are to be served because of inability to pay the full price thereof, and the serving of the lunches to such children shall be effected in accordance with Part 245 of this chapter.

[35 FR 14063, Sept. 4, 1970]

§ 210.9a Student, parent, and community involvement.

(a) School Food Authorities shall promote activities to involve children and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, program promotion, and related student-community support activities.

(b) School Food Authorities are encouraged to use the school food service program to teach children about good

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nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(c) School Food Authorities experiencing food service management problems shall comply with the provisions of § 210.14(f) with regard to the required design of activities to involve parents and children in the school food service program.

(d) School Food Authorities contracting with a food service management company shall comply with the provision of § 210.8a(c) with regard to the establishment of an advisory board of parents, teachers, and children.

(e) Residential child care institutions shall comply with the provisions of paragraphs (a), (b), (c), and (d), of this section, to the extent possible.

(Sec. 9, Pub. L. 79-396, 60 Stat. 233 (42 U.S.C. 1758(a))

[44 FR 48156, Aug. 17, 1979]

§ 210.10 Requirements for lunches.

(a)(1) This section, including the following table, sets forth the Federal lunch requirements. School Food Authorities that are able to serve quantities of food to children solely on the basis of their ages should do so. However, School Food Authorities that cannot serve children on the basis of age may serve children on the basis of grade level. School Food Authorities that cannot serve children on the basis of age or grade level shall serve all school age children group IV portions.

(2) *Table.* The table presents the minimum Federal lunch requirements for groups I to IV and larger recommended amounts for group V. The requirements and recommendations are designed to provide a nutritious and well-balanced lunch to each child: the nutrients of the lunch, averaged over a period of time, should *approximate* one-third of the Recommended Dietary Allowance for children of each group. Except as otherwise provided in this section, and in any appendix to this part, schools should plan and produce sufficient quantities of food to insure that all lunches contain all the food components in at least the amounts indicated. Schools are required to plan and produce sufficient quantities of food to serve groups I to IV *no less than* the specified amounts for those children. Schools are required to plan and produce sufficient quantities of food to serve group V *no less than* the specified amounts for group IV and are encouraged to serve these older children the larger amounts specified in the table. Schools may serve all children the specified amounts for group IV.

(i) *Milk.* As noted in the table, schools must offer unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage. Therefore, if a school serves another form of milk (whole or flavored), it must offer its children unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice. School Food Authorities that served ¾ cup (6 fluid ounces) of milk to group III children prior to May 1, 1980 may continue to do so. Such School Food Authorities shall document the date on which they began such service and their reasons for adopting this portion size.

(ii) *Meat or meat alternate.* (A) The quantity of meat or meat alternate must be the quantity of the edible portion *as served.* When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate must be served in a main dish or in a main dish and only one other menu item.

(B) The Department recommends that if schools do not offer children a choice of meat/meat alternates each day, they serve no one meat alternate or form of meat (ground, diced, pieces, etc.) more than three times in a single week.

Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part of the meat/meat alternate requirement. (See Appendix A.)

(iii) *Vegetable or fruit.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of

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the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal.

(iv) *Bread or bread alternate.* The bread requirement, unlike the other component requirements, is to be met over a week's time. Schools must serve daily at least a one-half serving of bread/bread alternate to children in group I and one serving to children in groups II-V. Schools serving lunch six or seven days per week should increase this specified quantity by approximately 20 percent (1/5) for each additional day. When schools operate less than five days per week they may decrease this specified quantity by approximately 20% (1/5) for each day less than five. As noted in the Table, all bread or bread alternate products must be enriched or whole-grain. The servings for biscuits, rolls, muffins, and other similar bread alternates are specified in the *Food Buying Guide.*

An enriched macaroni product with fortified protein as defined in Appendix A may be used as part of a meat alternate or as a bread alternate, but not as both food components in the same meal.

(3) With State approval, schools that serve children 1-5 years old may, and are encouraged to, divide the service of the specified quantities and components of foods into two distinct service periods. Schools may divide the quantities and/or components between these service periods in any combination that they choose.

School Lunch Pattern—Approximate Per Lunch Minimums

Components	Minimum quantities					Recommended quantities, Group V, 12 years and older (7–12[2])
		Group I, age 1–2 (Preschool)	Group II, age 3–4 (Preschool)	Group III, age 5–8 (K–3)	Group IV, age 9 and older (4–12)	
Milk	Unflavored, fluid lowfat, skim, or buttermilk must be offered [1].	¾ cup (6 fl. oz.)	¾ cup (6 fl. oz.)	½ pint (8 fl. oz.)	½ pint (8 fl. oz.)	½ pint (8 fl. oz.)
Meat or Meat Alternate (quantity of the edible portion as served).	Lean meat, poultry, or fish	1 oz	1½ oz	1½ oz	2 oz	3 oz
	Cheese	1 oz	1½ oz	1½ oz	2 oz	3 oz
	Large egg	½	¾	¾	1	1½
	Cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½ cup	¾ cup
	Peanut butter or an equivalent quantity of any combination of any of above.	2 Tbsp	3 Tbsp	3 Tbsp	4 Tbsp	6 Tbsp
Vegetable or Fruit.	2 or more servings of vegetable or fruit of both.	½ cup	½ cup	½ cup	¾ cup	¾ cup
Bread or Bread Alternate (servings per week).	Must be enriched or whole-grain—at least ½ serving [3] for group I or one serving [3] for groups II–V must be served daily.	5	8	8	8	10

[1] If a school serves another form of milk (whole or flavored), it must offer its children unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice.

[2] The *mimimum* portion sizes for these children are the portion sizes for group IV.

[3] Serving = 1 slice of bread; or ½ cup of cooked rice, macaroni, noodles, other pasta products, other cereal product such as bulgur and corn grits; or as stated in the *Food Buying Guide* for biscuits, rolls, muffins, and similar products.

(4) School Food Authorities that increase portion sizes for group V may allow these children to request smaller portion sizes of the lunch components as long as the portion size is not less than the portion required for group IV.

(5) Each school shall offer its students all five food items of the lunch. Senior high students must be permitted to decline up to two items. Students below the senior high level may be permitted to decline up to two items, or only one item, at the discretion of the local School Food Authority. A student's decision to decline food items or accept smaller portions shall not affect the charge for the lunch. State educational agencies shall define "senior high".

(6) To provide variety and to encourage consumption and participation, School Food Authorities should, whenever possible, provide a selection

of foods and types of milk from which children may make choices. When a School Food Authority offers more than one lunch, or when it offers a variety of foods and types of milk for choice within the required lunch pattern, the School Food Authority shall offer all children the same selections regardless of whether the children are eligible for free or reduced price lunches or pay the full price.

(b) When infants up to 1 year of age participate in the Program, an infant lunch pattern shall be offered. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served. The amount of food in the lunch may be offered to the infant during a span of time consistent with the infant's eating habits. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) 0 to 4 months—four to six fluid ounces of infant formula; and zero to one tablespoon of infant cereal; and zero to one tablespoon of fruit or vegetable of appropriate consistency or a combination of both.

(2) 4 to 8 months—six to eight fluid ounces of infant formula; and one to two tablespoons of infant cereal; and one to two tablespoons of fruit or vegetable of appropriate consistency or a combination of both; and zero to one tablespoon of meat, fish, poultry, or egg yolk, or zero to one-half ounce (weight) of cheese or zero to one ounce (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(3) 8 months to 1 year—six to eight fluid ounces of infant formula, or six to eight fluid ounces of whole fluid milk and zero to three fluid ounces of full-strength fruit juice; and three to four tablespoons of fruit or vegetable of appropriate consistency or infant cereal or combination of such foods; and one to four tablespoons of meat, fish, poultry, or egg yolk, or one-half to two ounces (weight) of cheese or one to four ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(c) If emergency conditions temporarily prevent a school that normally has a supply of unflavored fluid lowfat milk, skim milk, or buttermilk from obtaining delivery of such milk, the State agency or FNSRO where applicable, may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(d) The inability of a school to obtain a supply of unflavored fluid lowfat milk, skim milk, or buttermilk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency, or FNSRO where applicable, may approve the service of another type of fluid milk. The Department recommends that the State agency, or FNSRO where applicable, approve for service the available fluid milk with the lowest fat and sugar content.

(e) The inability of a school to obtain a supply of any type of fluid milk on a continuing basis shall not bar it from participating in the Program. In such cases the State agency, or FNSRO where applicable, may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole dry, or nonfat milk in the preparation of the lunch.

(f) In American Samoa, Puerto Rico, and the Virgin Islands, schools may serve a starchy vegetable, such as yams, plantains, or sweet potatoes, to meet the bread/bread alternate requirement.

(g) Substitutions may be made in foods listed in the table of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority that includes recommended alternate foods.

(h) FNS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(i) The Secretary, with the concurrence of officials of the Trust Territory of the Pacific Islands, has established a meal pattern which is consonant with local food consumption patterns and which, given available food supplies and foodservice equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The requirements for that pattern are attached to and made a part of the written agreeement required under § 210.3. Because the Commonwealth of the Northern Mariana Islands was part of the Trust Territories when this special meal pattern was established, this meal pattern shall also apply to the Commonwealth and be made part of their written agreement.

(j) In the event of a natural disaster, FNS may temporarily allow schools to serve lunches for reimbursement that do not meet the requirements of this section.

(Sec. 9, Pub. L. 79-396, 60 Stat. 233 (42 U.S.C. 1758(a)); sec. 811, Pub. L. 97-35, 95 Stat. 521, 535 (42 U.S.C. 1758))

[45 FR 32514, May 16, 1980, as amended at 47 FR 35166, Aug. 13, 1982; Amdt. 55, 47 FR 51550, Nov. 16, 1982]

§ 210.11 Reimbursement payments.

(a) State agencies, or FNS where applicable shall make reimbursement payments to School Food Authorities only in connection with lunches meeting the requirements of § 210.10 of this part and reported in accordance with § 210.13(b) of this part. General cash-for-food assistance payments and special cash assistance payments shall be made to assist School Food Authorities in financing nonprofit school food service operations. The primary purpose of these payments shall be to obtain food for the Program and to provide free and reduced price lunches to eligible children. School Food Authorities shall plan for and prepare lunches on the basis of participation trends, with the objective of providing one lunch per child per day. Production and participation records shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of lunches needed and to reduce the resultant waste, any excess lunches that are prepared may be served to eligible children and may be claimed for reimbursement unless the State agency, or FNSRO where applicable, determines that the School Food Authority has failed to plan and prepare lunches with the objective of providing one lunch per child per day. In no event shall the School Food Authority claim or be eligible for special cash assistance reimbursement for free and reduced price meals in excess of the number of children approved for free and reduced price meals.

(b) Maximum general cash-for-food assistance and special cash assistance rates of reimbursement which may be paid to School Food Authorities by State agencies, or FNS where applicable, shall be prescribed by the Secretary by July 1 of each year. At the beginning of the school year, State agencies, or FNSROs where applicable, shall, within these maximums, initially assign rates of reimbursement for each School Food Authority. Such rates of reimbursement may be assigned at levels based on financial condition. The assigned rates shall permit reimbursement for the total number of lunches, including reduced price lunches and free lunches, from the general cash-for-food assistance funds and from the special cash assistance funds available under § 210.4 of this part to the State agency, or FNSRO where applicable.

(c) Based on the principles set forth in this section, State agencies, and FNSROs where applicable, shall have maximum flexibility in assigning rates of reimbursement from general cash-for-food assistance and special cash assistance funds among School Food Authorities: *Except that*, for any School Food Authority, the same rate of reimbursement from general cash-for-food assistance funds shall be assigned for the lunches served to children at the full price and for lunches served to children free or at a reduced price. The combined rates of reimbursement from general cash-for-food assistance and special cash assistance funds for each free or reduced price lunch are hereinafter referred to as the "per lunch reimbursement".

(d) The total general cash-for-food assistance reimbursement and special cash assistance reimbursement paid to any School Food Authority for lunches served to children during the school year shall not exceed the sum of the products obtained by multiplying the total number of free, reduced price and paid lunches respectively, served to eligible children during the school year by the applicable maximum per lunch reimbursement for each type of lunch prescribed for the school year.

(e) Assigned rates of reimbursement from general cash-for-food assistance and special cash assistance may be changed at any time by the State agency, or FNSRO where applicable. Notice of any change shall be given to the School Food Authority.

(Pub. L. 96-499, secs 201 and 204, 94 Stat. 2599; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); 44 U.S.C. 3506; sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757))

[38 FR 35476, Dec. 28, 1973, as amended at 39 FR 22248, June 21, 1974; 41 FR 23696, June 11, 1976; 42 FR 2972, Jan. 14, 1977; 46 FR 3813, Jan. 16, 1981; 46 FR 51367, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982; 47 FR 31374, July 20, 1982; 48 FR 40196, Sept. 6, 1983]

§ 210.12 Effective date for reimbursement.

Reimbursement payments shall be made only to School Food Authorities operating under an agreement with the State Agency, or the Department, and shall be made only after execution of the agreement. Such payments may include reimbursement in connection with lunches served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed, provided that both months are in the same fiscal year.

[35 FR 753, Jan. 20, 1970]

§ 210.13 Reimbursement procedure.

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State Agency, or FNSRO where applicable, a monthly Claim for Reimbursement, as set forth in paragraphs (b) and (b-1) of this section.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Programs Operations required under § 210.14(g)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only lunches served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS-10) for the claim month which is required under § 210.14(g)(2). Upward adjustments in Program funds claimed which are not reflected in the final FNS-10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(b-1) The State agency, or FNSRO where applicable, may authorize a School Food Authority to submit a consolidated Claim for Reimbursement for all schools under its jurisdiction, provided that the data on each

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school's operations required in paragraph (b) of this section are maintained on file at the local office of the School Food Authority, and the Claim separates consolidated data for commodity schools from data for other schools.

(c) Notwithstanding any other provision of this section, the State agency, or FNSRO where applicable, may advance funds available for the program to a school food authority in an amount equal to the amount of reimbursement estimated to be needed for 1 month to make payments for the total number of lunches, including free and reduced price lunches, to be served to children in participating schools under the jurisdiction of the school food authority. The State agency, or FNSRO where applicable, shall require school food authorities who receive advances of funds under this paragraph to make timely submissions of claims for reimbursement on a monthly basis and shall suspend advances of funds in the absence of such timely submissions. Following the receipt of claims, the State agency, or FNSRO where applicable, shall make such adjustments as are necessary in such advances of funds to insure that the total amount of payments received by a school food authority for the fiscal year will not exceed an amount equal to the number of lunches, including free and reduced price lunches, served to children times the respective rates of payment assigned by the State agency, or FNSRO where applicable, in accordance with § 210.11.

(Secs. 801, 803, 812; Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a); sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622, (42 U.S.C. 1751), Pub. L. 97-370, 96 Stat. 1806)

[35 FR 14064, Sept. 4, 1970, as amended at 46 FR 51367, Oct. 20, 1981; 47 FR 15982, Apr. 13, 1982; 47 FR 31375, July 20, 1982; 48 FR 40196, Sept. 6, 1983; Amdt. 62, 49 FR 18985, May 4, 1984]

§ 210.14 Special responsibilities of State agencies.

(a) Each State agency, or FNSRO where applicable, shall provide program assistance as follows:

(1) Each State agency or FNSRO where applicable, shall provide consultative, technical, and managerial personnel to administer programs and monitor performance and to measure progress towards achieving program goals.

(2) Such assistance shall include visits to participating School Food Authorities and schools to ensure compliance with program regulations and with the Department's nondiscrimination regulations (Part 15 of this title), issued under Title VI of the Civil Rights Act of 1964. AIMS reviews, AIMS audits, a combination of AIMS reviews and AIMS audits, or compliance monitoring visits as described in this section, shall be made in all participating School Food Authorities.

(3) *AIMS Reviews*—(i) *Scope of AIMS reviews.* States doing AIMS reviews shall monitor compliance with the AIMS Performance Standards described in § 210.2 of this part. On a first AIMS review, the State agency shall review the School Food Authority for Performance Standards 1-4. On second AIMS reviews, the State agency shall, as a minimum, review the School Food Authority for the performance standards which exceeded error tolerances in the first review. In reviewing for performance standards:

(A) The State agency shall analyze and determine the adequacy of local approval procedures for free and reduced price meals by examining the eligibility determinations made within the School Food Authority. This shall be accomplished by reviewing the applications for all children who attend the reviewed schools and for whom application was made, or for a statistically valid sample of such children. If a statistically valid sample is chosen, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than two percentage points less than the point estimate) and, shall assess the need for a second review and base fiscal action upon the error rate found in the sample. The State agency shall also ensure that the system to update applications is adequate.

(B) The State agency shall ensure that, at a minimum, for each school reviewed, the number of free and the number of reduced price meals (by type) claimed in the School Food Authority's most recent claim for reimbursement does not exceed the number of children correctly approved for free and reduced price meals (by type) for the claim period times the days of operation of that school as reported to the School Food Authority for the claim month.

(C) The State agency shall ensure that each school reviewed has an adequate system for counting and recording meals served by type (i.e., free, reduced price and paid) and that the School Food Authority properly consolidates meal counts from its schools.

(D) The State agency shall determine by observation of a representative sample of meals that all meals contain all required components.

(ii) *Frequency of AIMS reviews.* The State agency shall review all School Food Authorities at least once every four years, with a minimum of 20 percent of all School Food Authorities to be reviewed for each of the first two years of the first four-year period. The State agency shall use its own criteria to select SFAs for AIMS reviews.

(iii) *Timing of AIMS reviews.* The first AIMS review of a School Food Authority shall be completed within the school year in which it is scheduled for review. A second AIMS review, when required, is recommended to be conducted in the same school year as the first review and is required to be conducted no later than December 31 of the school year following the first review.

(iv) *Method of selecting specific schools to review on AIMS reviews.* On a first AIMS review the State agency shall select the required minimum number of schools to review on a proportionate basis from each type of attendance unit (elementary school, middle school, high school, etc.), and shall select schools within attendance unit groupings either randomly or by using State agency criteria which shall be kept on file at the State agency. The State agency's criteria shall ensure that some of the schools selected are chosen because of the likelihood of problems. On a second AIMS review, the State agency shall choose schools using State agency criteria, which may include random selection. State agency criteria for selecting schools for second AIMS reviews shall also be kept on file. The total minimum number of schools to be selected and reviewed during a first or second AIMS review of a School Food Authority is specified in § 210.14(a)(4).

(v) *Error tolerance for AIMS review.* A corrective action plan as described in this section shall be undertaken in all School Food Authorities and a second review shall be triggered in all large and one-quarter of all small School Food Authorities, if on a first AIMS review the State agency finds that the following error tolerance levels are exceeded:

(A) For AIMS Performance Standard 1, 10 percent or more (but not less than 10 children), of the children listed on reviewed applications and attending reviewed schools in a SFA are incorrectly approved or denied for free or reduced price meal benefits; and/or

(B) For AIMS Performance Standard 2, a number of schools reviewed in a School Food Authority, as specified in the following table, claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the test period times the days of operation for the period; and/or

(C) For AIMS Performance Standard 3, a number of schools reviewed in a School Food Authority, as specified in the following table, do not have an adequate system for counting and recording meal totals for paid, free and reduced price meals claimed for reimbursement which yields correct claims, or the School Food Authority does not use valid procedures for consolidating claims; and/or

(D) For AIMS Performance Standard 4, 10 percent or more of the total meals observed in a School Food Authority are missing one or more components.

The following chart indicates the number of schools violating Performance Standards 2 or 3, which would trigger a corrective action plan in the applicable School Food Authority and a second review in all large School Food Authorities and 25 percent of the small School Food Authorities.

Number of schools reviewed	Number of schools [1]
1 to 10	1
11 to 20	2
21 to 30	3
31 to 40	4
41 to 50	5
51 to 60	6
61 to 70	7
71 to 80	8
81 to 90	9
91 to 100	10
101 or more	[2] 10

[1] Number of schools violating Performance Standards 2 or 3 respectively, thus necessitating a second review of the School Food Authority.

[2] 10 plus the number identified above for the appropriate increment.

(vi) *Corrective action plans for AIMS reviews.* Corrective action plans are required to address AIMS performance standard deficiencies exceeding the error tolerance level described in this section. The following procedures shall be followed to develop a corrective action plan:

(A) The State agency shall assist the School Food Authority in developing a mutually agreed upon corrective action plan.

(B) The corrective action plan shall identify the actions and timeframes needed to correct the deficiencies found during the review. Corrective action shall include amending claims for reimbursement if necessary.

(C) The plan shall be written, signed by the School Food Authority, and submitted to and approved by the State agency within 60 days following the exit conference of a review. State agencies may extend this deadline to 90 days. Extensions beyond 90 days may be made for cause, with written justification to and approval by FNSRO.

(D) The State agency shall require the School Food Authority to implement an amended or extended corrective action plan when error tolerance levels described in this section are exceeded on a second AIMS review.

(vii) *New violations found on a second AIMS review.* If during the course of a second AIMS review a performance standard violation is found that has not been noted on a previous AIMS review, the State agency shall institute and document appropriate corrective action. If the violation exceeds the error tolerance level described in this section, a corrective action plan as described in this section shall be developed and corrective action shall be taken. In either case a claim shall be assessed as described in § 210.16 of this part.

(4) *AIMS audit.* Audits by State agency, State, or State contracted auditors may be used as an alternative to AIMS reviews as described in this section. If the State agency chooses this option, the audit must determine whether the four performance standards listed under § 210.2 of this part are being complied with by the audited School Food Authority. This includes performing all activities described in § 210.14(a)(3)(i) (A) through (D) under "AIMS reviews." Additionally, a State using AIMS audits in place of AIMS reviews shall:

(i) Audit all School Food Authorities once every two years;

(ii) Take fiscal action against a School Food Authority for any degree of violation of Performance Standards 2 through 4 using its own methodology which reflects the longevity and severity of the problem;

(iii) Have a documented system for achieving corrective action;

(iv) Use USDA's audit guide or have its State audit guide approved by the Department's Office of the Inspector General (OIG). A State agency shall submit its guide to FNSRO by February 1 of each year; and

(v) Select schools within a School Food Authority based upon generally accepted audit principles.

(5) *Number of schools the State shall review or audit for AIMS.* The number of schools within the School Food Authority which must be included in a review/audit is dependent upon the number of schools in the School Food Authority. The minimum number of schools the State agency shall review/

audit is illustrated in the following table:

Number of schools in the School Food Authority	Minimum number of schools to be reviewed/audited
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	[1] 12

[1] 12 + 5% of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(6) *Exit conference notification and correction action.* (i) The State and the School Food Authority shall hold an exit conference at the close of an AIMS review/audit to discuss the deficiencies observed, the extent of the deficiencies and the corrective action needed to correct the deficiencies. If a corrective action plan is needed, as described in § 210.14(a)(3)(v), it shall be discussed during the exit conference. After every AIMS review/audit the State shall provide written notification of the review/audit findings to the School Food Authority's superintendent or representative who signed the State agency/School Food Authority agreement.

(ii) The State shall require that the School Food Authority take and document corrective action for any program deficiency found on any review/audit. Corrective action can include training, assistance, recalculation of data to ensure the correctness of any claim that the School Food Authority is preparing at the time of the review or other actions. As discussed in this section, a formal corrective action plan shall be developed if error tolerance levels are exceeded on an AIMS review.

(7) In lieu of implementing AIMS, as described in this section, a State agency may develop its own compliance monitoring system that is equivalent to AIMS in scope. A State agency's compliance monitoring system must be approved by FNSRO prior to being implemented and must meet the following criteria:

(i) It monitors compliance with AIMS Performance Standards 1-4,

(ii) It includes on-site monitoring of all School Food Authorities on a cyclical basis,

(iii) It requires that corrective action be taken and documented for any program deficiency found;

(iv) It provides for fiscal action and sets forth the State agency's criteria for taking such action; and

(v) It provides that the following documentation be maintained by the State agency:

(A) A detailed description of the monitoring system, and

(B) Records of all monitoring visits and activities which demonstrate the degree of compliance with AIMS performance standards, corrective action needed and taken, and fiscal action taken. This documentation must be kept on file by the State agency for a minimum of three years after the year of activity or the year in which problems have been resolved.

(a-1) Each State agency, or FNS where applicable, shall establish a financial management system under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, the cost principles contained in OMB Circular A-87 and 7 CFR Part 3015. The system shall permit determination of school food service net cash resources, and shall include any criteria for approval of net cash resources in excess of three months average expenditures. In addition, School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority.

(a-2) *Payment of claims.* A State agency may make full or partial reimbursement on a Claim for Reimbursement without prior administrative approval of the correctness of the claim but shall make any adjustments in such payment as are necessary following the administrative approval of such claim.

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(a-3) *Extending agreements with school food authorities.* An agreement with a school food authority shall not be extended into the subsequent fiscal year until all the Claims for Reimbursement and the information required under § 210.13(c) for the current fiscal year have been submitted by such authority.

(b) Food service management companies. Each State agency, or FNSRO where applicable, shall review yearly each contract between any School Food Authority and a food service management company to ensure compliance with all the provisions and standards set forth in § 210.8a.

(c) Each State agency, or FNSRO where applicable, shall monitor on-site each year not less than 20 percent of all School Food Authorities who have contracted with a food service management company and may require that all food service management companies that wish to contract for food service with any School Food Authorities in the State must register with the State agency. State agencies, or FNSRO where applicable, shall provide assistance upon request of a School Food Authority to assure compliance with program requirements.

(d) *Commodity distribution information.* (1) The State agency from time to time shall assess the needs of schools for commodities donated under Part 250 of this chapter, notify the distributing agency of the schools' commodity needs, and recommend variation in rates of distribution to meet variations in need.

(2) As early as practicable each school year, but no later than September 1, the State agency shall forward to the distributing agency and FNSRO (i) an estimate of the average daily number of lunches to be served by National School Lunch Program schools, and (ii) with respect to commodity schools, an estimate of the average daily number of lunches to be served and the amount of any cash payments in lieu of commodities for donated-food processing and handling expenses to be received by or on behalf of such schools in accordance with § 240.5 of this chapter, except that for the school year ending June 30, 1982, this information shall be forwarded to the distributing agency and FNSRO no later than May 28, 1982.

(3) The State agency shall promptly revise the information required by paragraphs (d) (1) and (2) of this section to reflect additions or deletions of eligible schools and provide any necessary adjustments in the number of lunches served.

(e) *Plentiful foods.* State agencies shall provide schools with information on foods available in plentiful supply, based on information provided by the Department.

(f) *School Food Authorities with poor management practices.* In a School Food Authority where the State agency, or FNSRO where applicable, has found poor food service management practices leading to decreasing or low student participation and/or poor student acceptance of the Program or of foods served, the State agency, or FNSRO where applicable, in cooperation with the School Food Authority, shall develop, implement, and monitor a system to improve the School Food Authority's management practices. Poor student acceptance is indicated by a substantial number of students who routinely and over a period of time:

(1) Do not favorably accept a particular menu item; (2) return foods; or (3) under paragraph (4) of § 210.10, choose less than all five food items. The system to improve the School Food Authority's food service management practices shall include the promotion of student and parent involvement in program activities. This student and parent involvement shall be designed to assist in the correction of the School Food Authority's particular management problems and shall be in addition to the general requirement of student and parent involvement for all School Food Authority set forth in § 210.9a(a).

(g) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to School Food Authorities under § 210.11 and § 210.13 and the reports submitted to FNS under § 210.14(g)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, except that if audit findings have not been resolved, the records shall be retained beyond the three-year periods as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS-10) for each month, which shall be limited to claims submitted in accordance with § 210.13(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF-269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of the fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(3) Within 90 days after the end of each school year each State agency shall submit information on the State revenue matching requirements prescribed in § 210.6 of this part. This information shall be submitted on a form provided by FNS.

(4) Each State agency shall report to FNSRO the type and extent of regulatory violations and the name of any School Food Authority which exceeds an error tolerance level on a second AIMS review. Each State agency shall keep records which document the details of all AIMS reviews/audits and demonstrate the degree of compliance with AIMS performance standards. When necessary, the records must include a formal corrective action plan as described in this section. Additionally, the State agency must have on file:

(i) Its criteria for selecting schools on first and second reviews, if the selection is not random; (ii) its system for selecting small School Food Authorities for second review; and (iii) documentation demonstrating compliance with the statistical sampling requirements specified in § 210.14(a)(3). AIMS records must be kept on file by the State agency for a minimum of three years after the year of activity or the year in which problems have been resolved.

(h) *Investigations.* Each State Agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State Agencies shall maintain on file evidence of such investigations and actions. FNS or OI shall make investigations at the request of the State Agency or where FNS or OI determines investigations are appropriate.

(i) State agencies shall require School Food Authorities to comply with applicable provisions of this part.

(Secs. 801, 803, 812; Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751); sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757); sec. 813, Pub. L. 97-35 (42 U.S.C. 1762a))

[35 FR 753, Jan. 20, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 210.14, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 210.15 Review of net cash resources.

During audits, supervisory assistance reviews or by other means, State agencies, or FNSROs where applicable, shall be responsible for monitoring the net cash resources of the nonprofit

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school food service of each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service or such other amount as may be approved by the State agency or FNSRO where applicable, the State agency or FNSRO where applicable, may require the School Food Authority to reduce children's prices, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, adjustments in the rates of reimbursement under the Program shall be made.

(Sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757))

[47 FR 31375, July 20, 1982]

§ 210.15b Competitive food services.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and School Food Authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the National School Lunch Program.

(b)(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in Appendix B. In the case of artificially sweetened foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 210.2(h-1) that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 210.2(h-1) that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined in § 210.2(h-1), and will inform the petitioner in writing of such determination, and the public by notice in the FEDERAL REGISTER as indicated under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 210.2(h-1). The petition must identify and define the food category in easily understood language, list examples of the foods contained in the category and include a list of ingredients which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioner will be so notified in writing. If, upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 210.2(h-1), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of the foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value. The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the FED-

ERAL REGISTER as indicated under paragraph (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department will amend Appendix B to exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *Provided,* That there are necessary changes.

(Sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757))

[Amdt. 37, 45 FR 6771, Jan. 29, 1980, as amended at 45 FR 76937, Nov. 21, 1980; 50 FR 20547, May 17, 1985]

§ 210.16 Claims against School Food Authorities.

(a) State agencies shall take fiscal action, as described in this section, against School Food Authorities on Claims for Reimbursement that are not properly payable under this part. In taking fiscal action, State agencies shall use their own procedures, within the constraints of this section.

(b) The State shall determine the extent of fiscal action which must be taken to address the severity and longevity of the problems. Fiscal action includes but is not limited to: the adjustment of paid Claims for Reimbursement with recovery of overpayments through direct assessment or offset of future claims; disallowance of all or part of any unpaid Claims for Reimbursement; and correction of records to ensure that unfiled Claims for Reimbursement will be corrected when filed.

(1) When a State agency chooses to conduct AIMS reviews, as described in § 210.14, fiscal action may be assessed on a first review except fiscal action must be taken when, under Performance Standard 3, the number of meals claimed for School Food Authority reimbursement has been incorrectly aggregated from individual school reports so that an excessive number of meals has been claimed. State agencies are required to take fiscal action on the second review for any degree of violation of AIMS Performance Standards 2, 3, and 4.

(2) When a State agency chooses to conduct AIMS audits as described in § 210.14, fiscal action is required for any degree of violation of Performance Standards 2, 3, and 4.

(3) When a State agency develops its own compliance monitoring system in accordance with § 210.14(a)(7), fiscal action shall be taken in accordance with the criteria established under that system. These criteria shall be consistent in principle with the fiscal action requirements for AIMS reviews and audits as set forth in this section.

(c) The State Agency may refer to CND, through FNSRO, for determination any action it proposes to take under this section.

(d) The State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of a final Financial Status Report, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(e) If a State agency fails to disallow a claim or recover an overpayment from a School Food Authority, as described in this section, FNS shall notify the State agency that a claim shall be asserted against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the overpayment. If, after considering all available information, FNS determines that a claim is warranted, FNS shall assess a claim against the State agency. If the State agency fails to pay the claim, FNS shall take action in accordance with 7 CFR Part 3015, Subpart L to liquidate the indebtedness.

(f) The amounts recovered by the State Agency from School Food Authorities may be utilized, first, to make payments to School Food Authorities for the purposes of the Program during the fiscal year for which the funds were initially available, and second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

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(g) When FNSRO administers the program and disallows a claim or a portion of a claim, or makes a demand for a refund of an alleged overpayment, it shall notify the School Food Authority of the reasons for such disallowance or demand and the School Food Authority shall have full opportunity to submit evidence or to file reclaims for any amount disallowed or demanded in the same manner afforded in this section for schools with respect to which the Program is administered by State Agencies.

(h) In the event that the State Agency, or FNSRO where applicable, finds that a school is failing to meet the requirements of § 210.10(a)(2), (b)(2) and (b)(3), the State Agency or FNSRO need not disallow payment or collect an overpayment arising out of such failure, if the State Agency or FNSRO takes such other action as, in its opinion, will have a corrective effect.

(i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(Sec. 804, 816, 817, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, and 1785); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622, 42 U.S.C. 1751)

[35 FR 753, Jan. 20, 1970, as amended at 40 FR 30920, July 24, 1975; 41 FR 19200, May 11, 1976; Amdt. 50, 47 FR 14133, Apr. 2, 1982; Amdt. 60, 48 FR 27892, June 17, 1983]

§ 210.17 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this Part obtain audits as required by Office of Management and Budget Circulars A-102 or A-110, as applicable. The term "organization", as used in this section, shall refer to the entity whose financial management system controls the receipt, custody and disbursement of the Federal grant funds made available for the Program. The audits shall ascertain the effectiveness of the financial management systems and internal procedures that have been established by the auditee organization to meet the terms and conditions of its Federal grants. It is not required that the Program covered by this part be included in every audit. Rather, the audits shall be conducted on an organization-wide basis, and shall include an appropriate random sampling of Federal grant programs administered or operated by the auditee organization. The Program covered by this part shall be adequately represented in the universe from which each such sample is selected.

(2) The State agency, or FNSRO where applicable, shall establish procedures to ensure that it obtains the following information pertaining to each School Food Authority organization under its jurisdiction:

(i) The names of the Federal grant programs included in each audit obtained by the School Food Authority pursuant to the requirements of this part, regardless of whether such programs include the Program covered by this part; and (ii) the nature of any deficiencies intrinsic to the auditee's grants management system as revealed by audit. When system deficiencies, as discussed in the preceding sentence, are reported in audits that did not specifically test the program covered by this part, the State agency, or FNSRO where applicable, should make, or cause to be made, follow-up audits to determine the impact of such deficiencies upon the program covered by this part. The State agency, or FNSRO where applicable, shall establish procedures to assure timely and appropriate resolution of audit findings and recommendations, including findings relating to deficiencies such as those cited in paragraph (a)(2)(ii) of this section, which may impact upon the Program covered by this part.

(3) Audits shall be made in accordance with generally accepted auditing standards, including the standards published by the General Accounting

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Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Audits may be made by any of the following audit groups:

(i) School Food Authority and State agency staff auditors who are totally independent of the auditee;

(ii) State Auditors General;

(iii) State Comptrollers;

(iv) Other comparable independent State audit groups;

(v) Certified Public Accountants or

(vi) State licensed public accountants.

(4) Except as provided for in this section, each organization at the State agency and School Food Authority level shall obtain audits, meeting the conditions discussed in this section, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than once every two years. The State agency, or FNSRO where applicable, may elect not to require this audit frequency of School Food Authority organizations to which *Both* of the following conditions apply:

(i) The only Federal grant program or programs operated by the School Food Authority organization are the Program covered by this part, the Special Milk Program for Children, the School Breakfast Program, or any combination of such programs; and (ii) the level of Federal grant funds disbursed to the School Food Authority organization in any fiscal year does not exceed $10,000: *Provided, however,* That the State agency, or FNSRO where applicable, shall make or require an audit of such a School Food Authority when conditions indicate a need for such an audit.

(b) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary, (1) make audits on a statewide basis, (2) perform on-site test audits, and (3) review audit report and related working papers of audits performed by or for State agencies.

(c) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(d) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools) of all operations of the State agency under the Program and shall provide OA with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under the Program. Each State agency shall make available its records, including records of the receipt and expenditure of funds under such programs, upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any school.

(e) In making management evaluations or audits for any fiscal year, the State agency, FNS, or OA may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses generally. However, no overpayment shall be disregarded where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

(f) As a part of its Management Evaluation of a State agency, FNSRO shall evaluate the State's progress in effectively meeting the AIMS requirements.

(Sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751); secs. 805 and 819, Pub. L. 97-35, Stat. 521-535 (42 U.S.C. 1773); sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[40 FR 30920, July 24, 1975, as amended at 41 FR 19200, May 11, 1976; 43 FR 59823, Dec. 22, 1978; Amdt. 52, 47 FR 18564, Apr. 30, 1982; 48 FR 194, Jan. 4, 1983; Amdt. 60, 48 FR 27892, June 17, 1983]

§ 210.18 Prohibitions.

In carrying out the provisions of the Act neither the Department nor the State Agency shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

[35 FR 753, Jan. 20, 1970]

§ 210.19 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency, or FNSRO where applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

[Amdt. 62, 49 FR 18986, May 4, 1984]

§ 210.19a Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The Standards contained in OMB Circular A-102 and 7 CFR Part 3015 do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature, matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or School Food authority may use their own procurement procedures which reflect applicable state and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR Part 3015.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 58, 48 FR 19354, Apr. 29, 1983]

§ 210.20 State Food Distribution Advisory Councils.

(a) Each State educational agency shall establish a School Food Distribution (SFD) Advisory Council, to be composed of representatives of schools in the States that participate in the program. The SFD Advisory Council shall meet at least once each year and after the school year beginning July 1, 1980, report to the State agency no later than January 15 of each year its recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State agency shall inform FNSRO of the SFD Advisory Council's recommendations no later than February 15 of each year after the school year beginning July 1, 1980.

(b) The structure of the SFD Advisory Council shall be as follows:

(1) The Chairman and Vice Chairman of the SFD Advisory Council shall be elected by the members of the SFD Advisory Council.

(2) The Chief State school officer or his designee shall be an ex officio member of the SFD Advisory Council acting in an advisory capacity and as a non-voting member. The Chief Officer of the State distributing agency, or his designee which distributes USDA donated foods to schools within the State, shall be an ex officio member of the SFD Advisory Council, also acting in an advisory capacity and as a non-voting member, unless the State edu-

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cational agency and the State distributing agency are the same entity within the State, in which case the ex officio member of the SFD Advisory Council shall be the Chief Food Distribution Officer of the State educational agency or his designee.

(3) Other representatives that the State should consider, based upon its current situation and needs, shall include but are not limited to:

(i) A school food service representative from a large urban school.

(ii) A school food service representative from a small rural school.

(iii) A school food service representative from a residential child care institution.

(iv) A representative from a locally recognized parent-teacher organization.

(v) A student of junior or senior high school.

(vi) A school food service representative from a private school.

(vii) A nutritionist.

(viii) A teacher.

(ix) A school administrator.

(c) Representatives of the SFD Advisory Council shall be appointed for not more than three years. To promote continuity within the SFD Advisory Council, initial appointments shall be selected for 1, 2 and 3-year terms.

(d) The responsibilities of SFD Advisory Council shall include but not be limited to providing the State agency, no later than January 15 of each year, the following information to be obtained in a survey of school food athorities within the State.

(1) The most desired foods.

(2) The least desired foods.

(3) Recommendations for new products.

The SFD Advisory Council shall also be encouraged to advise the State agency on: (i) The amounts of each food item desired; (ii) types of packaging and package size; (iii) shipping schedules; (iv) recommendations for changes in donated food specifications.

(d-1) In reporting the SFD Advisory Council's recommendations in accordance with paragraph (a) of this section, the State agency shall include:

(1) The number of school food authorities that provides the required information to the SFD Advisory Council;

(2) The average daily number of lunches servied by schools of these school food authorities during April of the previous year; and

(3) The average daily number of lunches served by all school food authorities within the State during April of the previous year.

(d-2) The State agency shall maintain records concerning the survey of school food authorities required by paragraph (d) of this section, including, but not limited to:

(1) A description of survey methods and a copy of the format used to obtain food preferences;

(2) The name and address of each school food authority included in the survey; and,

(3) A record of the data obtained from each school food authority.

(e) The State agency may make payments of justified expenses incurred for or by the SFD Advisory Council from State Administrative Expense funds. In instances when State Administrative Expense funds are used, payments shall be made in accordance with Part 235 of this chapter. State agencies which are the same entity as the State distributing agency may also use food distribution assessment funds as provided for in § 250.6 (i) and (j) of this chapter.

Members of the SFD Advisory Council shall serve without compensation. The SEA shall provide compensation for necessary travel and subsistence expenses incurred by them in the performance of the duties of the SFD Advisory Council. Parent and student participant members, in addition to necessary travel and subsistence expenses, shall be compensated for personal expenses related to participation on the SFD Advisory Council, such as child care expenses and lost wages during scheduled SFD Advisory Council meetings. The SEA shall establish a system whereby expenses will be paid in advance for any member who indicates that he/she cannot financially afford to meet any of the allowed expenses. In instances where members

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can meet these expenses, a reimbursement shall be provided in a timely manner.

(Sec. 6, Pub. L. 95-166, 91 Stat. 1334, 42 U.S.C. 1771 note)

[45 FR 999, Jan. 4, 1980, as amended by Amdt. 43, 45 FR 82889, Dec. 16, 1980; Amdt. 51, 47 FR 17436, Apr. 23, 1982]

§ 210.21 Program information.

School Food Authorities desiring information concerning these programs should write to their State educational agency or to the appropriate Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, Texas, 75202.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard CN02150, Trenton, New Jersey 08650.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430D, Denver, CO 80211.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(1), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626; sec. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785)

[35 FR 6255, Apr. 17, 1970, as amended by Amdt. 6, 38 FR 17722, July 3, 1973; Amdt. 22, 41 FR 19200, May 11, 1976; Amdt. 26, 42 FR 15053, Mar. 18, 1977; Amdt. 32, 44 FR 37897, June 29, 1979. Redesignated by Amdt. 34, 45 FR 999, Jan. 4, 1980; Amdt. 56, 48 FR 194, Jan. 4, 1983]

§ 210.22 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
210.3(c)	0584-0327
210.5(a), (b)	0584-0006
	0584-0341
	0584-0002
210.5a	0584-0006
210.6(f)	0584-0006
210.6(g)	0584-0075
210.8 (a), (b), (e)	0584-0006
	0584-0026
	0584-0329
210.8a	0584-0006
210.10(g)	0584-0006
210.11	0584-0006
210.13(a)-(b-1)	0584-0006
	0584-0284
210.13(c)	0584-0006
210.14 (a)-(f), (h)	0584-0006
210.14(g)	0584-0002
	0584-0341
210.15	0584-0006
210.16(a)-(d)	0584-0006
210.17(a)	0584-0006
210.19	0584-0006
210.19a	0584-0006
210.20 (a), (d), (d-1), (d-2)	0584-0006

[50 FR 53257, Dec. 31, 1985]

APPENDIX A—ALTERNATE FOODS FOR MEALS

ENRICHED MACARONI PRODUCTS WITH FORTIFIED PROTEIN

1. Schools may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) One ounce of dry enriched macaroni products with fortified protein may be used to meet not more than one-half of the meat or meat alternate requirements specified in § 210.10 when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Only enriched macaroni products with fortified protein that bear a label containing substantially the following legend shall be so utilized: "One ounce dry weight of this product meets one-half of the meat or meat alternate requirements of lunch or supper of the USDA child nutrition programs when served in combination with one or more ounces of cooked meat, poultry, fish, or cheese. In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FNS shall be substituted."

2. Only enriched macaroni products with fortified protein that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1.(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information is to be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following Standard of Identity, which is prescribed by the Food and Drug Administration in its regulations. The pertinent section (21 CFR 16.15) is as follows:

§ 16.15 Enriched macaroni products with fortified protein; identity; label statement of ingredients.

(a)(1) Each of the foods for which a standard of identity is prescribed by this section is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in §§ 16.1(a) and 16.3(a),[1] and other ingredients to enable the finished food to meet the protein requirements set out in paragraph (2)(i) of this paragraph. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) of this section. Safe and suitable ingredients, as provided for in paragraph (c) of this section, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the cited sections of the book "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th edition, 1970, meets the following specifications:

(i) The protein content (N × 6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the method in § 14.134. The protein quality is not less than 95 percent that of casein as determined on the cooked food by the method in sections 39.166 through 39.170 of the official methods.

(ii) The total solids content is not less than 87 percent by weight as determined by the method in § 14.125 of the official methods.

(b)(1) Each food covered by this section contains in each pound 5 milligrams of thiamin, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Iron and calcium may be added only in forms which are harmless and assimilable. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. The requirements of paragraphs (1) and (2) of this paragraph shall be deemed to have been met if reasonable overages, within the limits of good manufacturing practice, are present to assure that the prescribed levels of the vitamins and mineral(s) are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) The safe and suitable ingredients referred to in paragraph (a) of this section are

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[1] 21 CFR 16.1(a) and 16.3(a) state in part that macaroni products are the class of food each of which is prepared by drying formed units of dough. (Footnote added by USDA.)

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ingredients that serve a useful purpose, e.g., to fortify the protein or facilitate production of the food, but they do not include color additives, artificial flavorings, artificial sweetners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act, or in case they are food additives, if they are used in conformity with regulations established pursuant to section 409 of that Act.

(d)(1) The name of any food covered by this section is "Enriched Wheat ——— Macaroni Product—with Fortified Protein," the blank being filled in with appropriate word(s) such as "Soy" to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words "Macaroni Product" the word "Macaroni," "Spaghetti," or "Vermicelli," as appropriate, may be used if the units conform in shape and size to the requirements of § 16.1 (b), (c), or (d).[2]

(2) When any ingredient, not designated in the part of the name prescribed in paragraph (1) of this paragraph, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement "Made with ———," the blank being filled in with the name of each such ingredient, e.g., "Made with nonfat milk."

(3) When, in conformity with paragraph (1) or (2) of this paragraph, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) In the case of a food made to comply with another section of this part, but which also meets the compositional requirements of this section, it may alternatively bear the name set out in that other section.

(e) The common name of each of the ingredients used shall be declared on the label as required by the applicable section of Part 1 of this chapter. Further, the declaration of ingredients as set forth in this paragraph, shall appear in letters not less than one-half the size of that required by § 1.8b of this chapter for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by FDA in 21 CFR 80.1. Any changes that are made in the Standard of Identity for enriched macaroni products with fortified protein (21 CFR 16.15) will be accepted by FNS.

CHEESE ALTERNATE PRODUCTS

1. Schools may utilize cheese alternate products, described in paragraph 3, as a food component meeting the meal requirements of § 210.10 of the National School Lunch Program regulations under the following terms and conditions:

(a) Cheese alternate products shall be prepared and served in combination with natural or processed cheese. The natural or processed cheese with which cheese alternate products are mixed must meet Food and Drug Administration (FDA) standards of identity for cheese or processed cheese (21 CFR Part 19).

(b) Cheese alternate products shall be prepared in such a manner that the cheese alternate product and natural or processed cheese are combined in the cooking or heating process in the preparation of such cooked products as macaroni and cheese, grilled cheese sandwiches, cheeseburgers, enchiladas, pizzas, etc.

(c) The quantity, by weight, of cheese alternate product in the combination shall not exceed that of the natural or processed cheese.

(d) The combination of cheese alternate product and natural or processed cheese may meet all or part of the meat or meat alternate requirements specified in § 210.10.

(e) When cheese alternate products are served in a meal with other alternate foods that are authorized in this Appendix A, each individual alternate food shall be used as specifically directed.

(f) Only cheese alternate products that bear a label containing substantially the following legend shall be so utilized: "This product meets USDA-FNS specifications for cheese alternate products." In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FNS shall be substituted. The term "cheese alternate products" shall denote a class of products and not a product name. The name and labeling of the product shall comply with applicable regulations prescribed by FDA, USDA, or other government agencies.

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[2] 21 CFR 16.1(b), 16.1(c), and 16.1(d) are as follows: § 16.1(b) Macaroni is the macaroni product the units of which are tube-shaped and more than 0.11 inch but not more than 0.2 inch in diameter. § 16.1(c) Spaghetti is the macaroni product the units of which are tube-shaped or cord-shaped (not tubular) and more than 0.06 inch but not more than 0.11 inch in diameter. § 16.1(d) Vermicelli is the macaroni product the units of which are cord-shaped (not tubular) and not more than 0.06 inch in diameter. (Footnote added by USDA.)

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2. Only cheese alternate products that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(f) above. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, a statement verifying that the product maintains the physical and functional properties specified in 3(b), and such other pertinent data as may be requested by FNS.

This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. All laboratories shall retain the "raw" laboratory data for a period of one year. Such information will be made available to FNS upon request.

3. To be accepted by FNS, products must have the following properties and meet the following nutritional specifications:

(a) *Ingredients.* All ingredients shall be of food grade products. Protein materials shall be derived from animal sources. Lipid materials may be derived from either plant or animal sources. Lipids shall contain not more than 50 percent of their fatty acids in a saturated form. Both protein and lipid materials shall be combined with water, fats, or oils, salts, carbohydrates, vitamins and minerals in proportions necessary to meet composition specifications. All ingredients shall be in conformity with the Federal Food, Drug and Cosmetic Act and regulations pursuant to that act as applicable. All ingredients covered by USDA or FDA standards shall comply with requirements of those standards. The requirements as specified will be deemed to have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient of the cheese alternate products at such concentration that the level specified will be substantially exceeded in the final product. Such excess will be permitted but no label claim of nutritional advantage can be made for overages for any nutrients. The product should not be formulated in such a manner that would require it to be classified as a Dietary Supplement, as described by FDA in 21 CFR 80.1.

(b) *Physical and functional properties*—(1) *Flavor.* Product shall be free of off-flavors characterized as onion, musty, grassyweedy, painty, rancid, fruity, etc.

(2) *Meltability.* Fifteen grams of product in shredded form on a slice of bread must melt to a smooth consistency and lose shred identity in a maximum of 3 minutes when placed in a conventional oven preheated and set at 500° F.

(3) *Texture and consistency.* A plug drawn from product held at 40° F shall be firm with slight elasticity when rolled between the fingers and free of weak or soft spots; it shall be smooth, but not dry, mealy, pasty, or smeary.

(4) *Slicing character.* Product, at 40° F, will slice to a 3½" × 3½" 21 gram slice without breaking, crumbling, binding or sticking.

(5) *Grinding character.* Product, at 40° F, will grind through a ⅛" extrusion die on a commercial food chopper without sticking or becoming gummy. Ground particles will form distinct pieces without sticking or clumping.

(c) *Nutritional specifications.* Cheese alternate products shall meet the compositional requirements set forth in the following table. All values are expressed on an "as-is" basis. The analytical methods employed should be those prescribed for cheese analysis in the Association of Official Analytical Chemists, 1970, "Official Methods of Analysis," 11th edition, Washington, D.C. or by appropriate analytical procedures FNS considers reliable.

NUTRITIONAL SPECIFICATIONS FOR CHEESE ALTERNATE PRODUCTS

Nutrients	Units	Required levels	
		Units per 100 grams of product	Maximum
Moisture	Percent		47.0
Carbohydrate	do		8.0
Ash	do		5.5
Protein [1]	do	23.0	
Fat	do	21.0	
Calcium	Milligram	650.0	
Phosphorus	do	150	
Iron	do	.5	
Magnesium	do	26	
Zinc	do	4	
Vitamin A	International unit.	1200	
Thiamin	Milligram	.02	
Riboflavin	do	.60	
Niacin	do	.10	
Folic acid	do	.15	
Vitamin B_6	do	.10	
Vitamin B_{12}	Microgram	1.0	

[1] Nitrogen times 6.38.

(d) *Biological value of protein.* The protein efficiency ratio, PER, of cheese alternate products shall not be less than 2.5 (casein = 2.5). PER shall be determined by the method "Biological Evaluation of Protein Quality" in the reference cited in the preceding section.

4. The Department will issue guidance materials for the use of the State agencies and FNS Regional Offices on the use of cheese alternates in the child nutrition programs.

VEGETABLE PROTEIN PRODUCTS

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in § 210.10, § 225.10 or § 226.21 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble as well as substitute, in part, for one of these major protein foods. Substitute refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in §§ 210.10, 225.10 or 226.21.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §§ 210.10, 225.10, 226.21 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate foods authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble and substitute, in part, for meat, poultry or seafood, as specified in paragraph 1 must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2.(a)(1) above shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a " flour", the blank is to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a " protein concentrate", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a " protein isolate" or "isolated protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut".

(c) Compliance with the moisture and protein provisions of paragraph 2.(b) (1), (2) and (3) above shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(d) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall be labeled in conformance with applicable sections of 102.76, tentative final regulations published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472). Adopted for the purpose of this regulation are the following:

(1) The common or usual names for a vegetable protein product used to resemble and substitute, in part, for meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term e.g., "granules," when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable."

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (i.e., flour, concentrate, isolate) in the ingredient statement of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2.(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product, e.g., "granules" when such term is appropriate.

(e) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall meet the following nutritional specifications adopted from § 102.76(f)(1)(ii)(*a*)(*b*) tentative final regulations, published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472).

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, determined by performing a Protein Efficiency Ratio (PER) assay or unless FNS grants an exception by approving an alternate test.

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble the meat, poultry or seafood).

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (micrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(4) Compliance with the nutrient provisions set forth in paragraph 2.(e) (1), (2) and (3) above shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble and substitute, in part, for meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA-FNS requirements for use in meeting a portion of the meat/meat alternate requirement of the child nutrition programs." This statement shall appear on the principal display panel area of the package.

(g) It is recommended that for vegetable protein products to be used to resemble and substitute, in part, for meat, poultry or seafood and labeled as specified in paragraph 2.(f) above, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in §§ 210.10, 225.10 or 226.21 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an

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alternate food in the child nutrition programs." (outlined in paragraph 2. above). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2. above. The presence of this label does not insure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

(Sec. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785); National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766, 7 CFR 210.10. 225.10, 226.21)

[39 FR 11248, Mar. 27, 1974, as amended at 39 FR 31514, Aug. 29, 1974; 39 FR 32733, Sept. 11, 1974; 40 FR 37027, Aug. 25, 1975; Amdt. 56, 48 FR 195, Jan. 4, 1983; 48 FR 780, Jan. 7, 1983]

APPENDIX B—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE

(1) *Soda water*—As defined by 21 CFR 165.175 Food and Drug Administration Regulations, except no product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals, and proteins.

(2) *Water ices*—As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) *Chewing gum*—Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) *Certain candies*—Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types:

(a) *Hard candy*—A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(b) *Jellies and gums*—A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(c) *Marshmallow candies*—An aerated confection composed of sugar, corn syrup, invert sugar, 20% water and gelatin or egg white to which flavors and colors may be added.

(d) *Fondant*—A product consisting of microscopic-sized sugar crystals which are separated by a thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(e) *Licorice*—A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(f) *Spun candy*—A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(g) *Candy coated popcorn*—Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

SCHEDULE FOR AMENDING APPENDIX B

Actions for publication	Publication	
	May	November
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day Comment Period.	Feb 1 through Apr. 1.	Aug. 1 through Oct. 1.
Public Notice of Amendment of Appendix B by.	May 1	Nov. 1.

Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FNS, USDA, Alexandria, Virginia 22302 on or before November 15 or May 15 of each year. Petitions must include all information specified in § 210.15b(b) (1) or (2), and § 220.12(b) (1) or (2) as appropriate.

(Sec. 17, Pub. L. 95-166, 91 Stat. 1345 (42 U.S.C. 1779); sec. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 US.C. 1753, 1756, 1759, 1771, 1773 and 1785))

[Amdt. 37, 45 FR 6772, Jan. 29, 1980, as amended at 45 FR 72081, Oct. 31, 1980; 45 FR 76937, Nov. 21, 1980; Amdt. 56, 48 FR 195, Jan. 4, 1983]

Appendix C—Child Nutrition (CN) Labeling Program

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

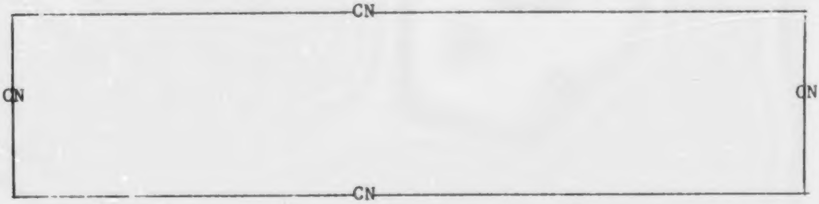
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) the "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The "CN label statement" includes the following:

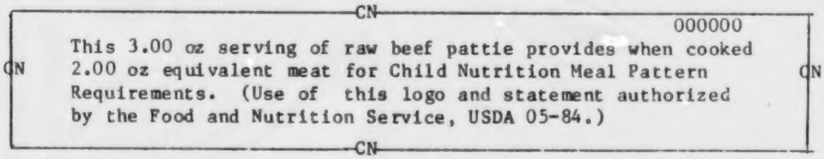
(1) The product identification number (assigned by FNS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:



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This 3.00 oz serving of raw beef pattie provides when cooked 2.00 oz equivalent meat for Child Nutrition Meal Pattern Requirements. (Use of this logo and statement authorized by the Food and Nutrition Service, USDA 05-84.)

(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices;

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984]

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

Sec.

215.1 General purpose and scope.
215.2 Definitions.
215.3 Administration.
215.4 Payments of funds to States and FNSROs.
215.5 Method of payment to States.
215.6 Use of funds.
215.7 Requirements for participation.
215.8 Reimbursement payments.
215.9 Effective date for reimbursement.
215.10 Reimbursement procedures.
215.11 Special responsibilities of State agencies.
215.12 Claims against schools or child care institutions.
215.13 Suspension, termination and grant closeout procedures.
215.13a Determining eligibility for free milk in child-care institutions.
215.14 Nondiscrimination.
215.14a Procurement standards.

Sec.
215.15 Suspension, termination and grant closeout procedures.
215.16 Program information.
215.17 Information collection/recordkeeping—OMB assigned control numbers.
APPENDIX—APPORTIONMENT OF SPECIAL MILK PROGRAM FUNDS PURSUANT TO CHILD NUTRITION ACT OF 1966, FISCAL YEAR 1976

AUTHORITY: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779), unless otherwise noted.

§ 215.1 General purpose and scope.

This part announces the policies and prescribes the general regulations with respect to the special milk program for children, under the Child Nutrition Act of 1966, as amended, and sets forth the general requirements for participation in the program. The Act reads in pertinent part as follows:

SEC. 3. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year, such sums as may be necessary, to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children. For the purposes of this section United States means the 50 States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia. Any school or nonprofit child-care institution which does not participate in a meal service program authorized under the National School Lunch Act or the Child Nutrition Act of 1966 shall receive the Special Milk Program upon its request. Children who qualify for free lunches under the guidelines established by the Secretary shall, at the option of the school involved (or the local educational agency involved in the case of a public school) be eligible for free milk upon their request. For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligibile institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year thereafter to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Notwithstanding any other provisions of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1172, 1753, 1766); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1772, 1784, 1760))

[38 FR 14956, June 7, 1973, as amended by Amdt. 13, 39 FR 28415, Aug. 7, 1974; 41 FR 31173, July 27, 1976; Amdt. 16, 43 FR 1059, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979; 46 FR 51365, Oct. 20, 1981]

§ 215.2 Definitions.

For the purpose of this part, the term:

(a) "Act" means the Child Nutrition Act of 1966.

(b) "Adults" means those persons not included under the definition of children.

(c) [Reserved]

(d) "Child Care Food Program" means the program authorized by section 17 of the National School Lunch Act, as amended.

(e) "Child-care institution" means any nonprofit nursery school, child-care center, settlement house, summer camp, service institution participating in the Summer Food Program for Children pursuant to Part 225 of this chapter, institution participating in the Child Care Food Program pursuant to Part 226 of this chapter, or similar nonprofit institution devoted to the care and training of children. The term "child-care institution" also includes a nonprofit agency to which such institution has delegated authority for the operation of a milk program in the institution. It does not include any institution falling within the definition of "School" in paragraph (v) of this section.

(e-1) "Children" means persons under 19 chronological years of age in child-care institutions as defined in § 215.2(e); or persons under 21 chronological years of age attending schools as defined in § 215.2(v)(2) and (3) of this part; or students, including students who are mentally or physically handicapped as defined by the State

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and who are participating in a school program established for the mentally or physically handicapped, of high school grade or under as determined by the State educational agency in schools as defined in § 215.2(v)(1) of this part.

(e-2) "CND" means the Child Nutrition Division of the Food and Nutrition Service of the Department.

(f) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(g) "FNSRO" means Food and Nutrition Services Regional Offices, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(h) "Cost of milk" means the net purchase price paid by the school or child-care institution to the milk supplier for milk delivered to the school or child-care institution. This shall not include any amount paid to the milk supplier for servicing, rental of or installment purchase of milk service equipment.

(i) "Department" means the U.S. Department of Agriculture.

(j) "Family" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

(j-1) "Free milk" means milk for which neither the child nor any member of his family pays or is required to work in the school or child-care institution or in its food service.

(k) "Fiscal year" means the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

(l) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(m) "National School Lunch Program" means the program under which general cash-for-food assistance and special cash assistance are made available to schools pursuant to Part 210 of this chapter.

(n) "Needy children" means: (1) Children who attend schools participating in the Program and who meet the School Food Authority's eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under Part 245 of this chapter; and (2) children who attend child-care institutions participating in the Program and who meet the eligibility standards for free milk approved by the State agency, or FNSRO where applicable, under § 215.13a of this part.

(o) [Reserved]

(p) "Nonpricing program" means a program which does not sell milk to children. This shall include any such program in which children are normally provided milk, along with food and other services, in a school or child-care institution financed by a tuition, boarding, camping or other fee, or by private donations or endowments.

(q) "Nonprofit milk service" means milk service maintained by or on behalf of the school or child-care institution for the benefit of the children, all of the income from which is used solely for the operation or improvement of such milk service.

(r) "Nonprofit" means exempt from income tax under the Internal Revenue Code, as amended.

(s) "OA" means the Office of Audit of the United States Department of Agriculture.

(t) "Pricing program" means a program which sells milk to children. This shall include any such program in which maximum use is made of Program reimbursement payments in lowering, or reducing to "zero," wherever possible, the price per half pint which children would normally pay for milk.

(u) "Program" means the Special Milk Program for Children.

(u-1) "Reimbursement" means financial assistance paid or payable to participating schools and child-care institutions for milk served to eligible children.

(v) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding $1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

(2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which:

(i) Maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(w) "School Breakfast Program" means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(w-1) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a milk program therein. The term "School Food Authority" also includes a nonprofit agency to which such governing body has delegated authority for the operation of a milk program in a school.

(x) "School year" means the period of 12 calendar months beginning July 1, 1977, and each July 1 of any calendar year thereafter and ending June 30 of the following calendar year.

(y) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or the Trust Territory of the Pacific Islands.

(z) "State agency" means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program.

(aa) "Summer Food Service Program for Children" means the program authorized by section 13 of the National School Lunch Act, as amended.

(bb) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and

(2) State, county or local funds provided for schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible.

In schools which vary tuition, to determine if the average yearly tuition exceeds $1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(cc) "Special needs children" means children who are emotionally, mentally or physically handicapped.

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(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766; sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626; sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1772, 1784, 1760))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 13, 39 FR 28415, Aug. 7, 1974; Amdt. 14, 41 FR 31173, July 27, 1976; Amdt. 16, 43 FR 1059, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Admt. 18, 44 FR 37898, June 29, 1979; 46 FR 2330, Jan. 9, 1981; 46 FR 51365, Oct. 20, 1981; Amdt. 26, 47 FR 18565, Apr. 30, 1982]

§ 215.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration.

(b) Within the States, to the extent practicable and permissible under State law, responsibility for the administration of the Program in schools and child-care institutions shall be in the educational agency of the State: *Provided, however,* That another State agency, upon request by the Governor or other appropriate State executive or legislative authority, may be approved to administer the Program in schools as defined in § 215.2(v)(2) or § 215.2(v)(3) or in child-care institutions.

(c) FNSRO shall administer the Program in any school as defined in § 215.2(v)(1) or § 215.2(v)(2) or in any child-care institution as defined in § 215.2(e) wherein the State agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FNSRO shall also administer the Program in all other schools and child-care institutions which have been under continuous FNS administration since October 1, 1980 unless the administration of such schools and institutions is assumed by a State agency. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program to schools or child-care institutions within certain States.

(d) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Secs. 804, 816 and 817, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 24, 47 FR 14133 Apr. 2, 1982]

§ 215.4 Payments of funds to States and FNSROs.

(a) For each fiscal year, the Secretary shall make payments to each State agency at such times as he may determine from the funds appropriated for Program reimbursement. Subject to § 215.11(c)(2), the total of these payments for each State for any fiscal year shall be limited to the amount of reimbursement payable to School Food Authorities and child care institutions under § 215.8 of this part for the total number of half-pints of milk served under the Program to eligible children from October 1 to September 30.

(b) Each State agency shall be responsible for controlling Program reimbursement payments so as to keep within the funds made available to it, and for the timely reporting to FNS of the number of half pints of milk actually served. The Secretary shall increase or decrease the available level of funding by adjusting the State agency's Letter of Credit when appropriate.

(Pub. L. 97-370, 96 Stat. 1806)

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 30, 49 FR 18986, May 4, 1984]

§ 215.5 Method of payment to States.

(a) Funds to be paid to any State shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall:

(1) Obtain funds needed to reimburse School Food Authorities and child-care institutions through presentation by designated State officials of

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a Payment Vocher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (2) submit requests for funds only at such times and in such amounts as will permit prompt payment of claims; (3) use the funds received from such requests without delay for the purpose for which drawn. Notwithstanding the foregoing provisions, if funds are made available by Congress for the operation of the Program under a continuing resolution, Letters of Credit shall reflect only the amount available for the effective period of the resolution.

(b) [Reserved]

(c) The State agency shall release to FNS any Federal funds made available to it under the Program which are unobligated at the end of each fiscal year. Release of funds by the State agency shall be made as soon as practicable but in no event later than 30 days following demand by FNSRO, and shall be reflected by a related adjustment in the State agency's Letter of Credit.

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31174, July 27, 1976]

§ 215.6 Use of funds.

(a) Federal funds made available under the Program shall be used to encourage the consumption of milk through reimbursement payments to schools and child-care institutions in connection with the purchase and service of milk to children in accordance with the provisions of this part: *Provided, however,* That, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special developmental projects an amount equal to not more than 1 per centum of the Federal funds so made available for any fiscal year.

(b) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall: (1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or (2) if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(c) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (b) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760; sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626; 44 U.S.C. 3506))

[Amdt. 14, 41 FR 31174, July 27, 1976, as amended by Amdt. 18, 44 FR 37898, June 29, 1979; 47 FR 746, Jan. 7, 1982]

§ 215.7 Requirements for participation.

(a) Any school or nonprofit child-care institutions shall receive the Special Milk Program upon request provided it does not participate in a meal service program authorized under the Child Nutrition Act of 1966 or the National School Lunch Act. Each School Food Authority or child-care institution shall make written application to the State agency, or FNSRO where applicable, for any school or child-care institution in which it desires to operate the Program, if such school or child-care institution did not participate in the Program in the prior fiscal year.

(b) Any School Food Authority or child care institution participating in the Program may elect to serve free milk to children eligible for free meals. Upon application for the Program and thereafter at least annually, each School Food Authority or child care institution:

(1) Shall be required by the State agency, or FNSRO where applicable, to state whether or not it wishes to provide free milk in the schools or institutions participating under its jurisdiction and

(2) If it so wishes to provide free milk, shall also submit for approval a free milk policy statement which, if for a school, shall be in accordance

with Part 245 of this chapter or, if for a child care institution, shall be in accordance with § 215.13a of this part.

(c) The application shall include information in sufficient detail to enable the State agency, or FNSRO where applicable, to determine whether the School Food Authority or child-care institution is eligible to participate in the Program and extent of the need for Program payments.

(d) The State agency, or the Department through FNSRO where applicable, shall enter into a written agreement with each School Food Authority or child-care institution approved for participation in the Program. Such agreement shall provide that the School Food Authority or child-care institution shall, with respect to participating schools and child-care institutions under its jurisdiction:

(1) Operate a nonprofit milk service.

(2) If electing to provide free milk (i) serve milk free to all eligible children, at times that milk is made available to nonneedy children under the Program; and (ii) make no discrimination against any needy child because of his inability to pay for the milk.

(3) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15);

(4) Claim reimbursement only for milk as defined in this part and in accordance with the provisions of § 215.8 and § 215.10;

(5) Submit Claims for Reimbursement in accordance with § 215.10 of this part and procedures established by the State agency or FNSRO where applicable;

(6) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(7) Upon request, make all records pertaining to its milk program available to the State agency and to FNS or OA for audit and administrative review, at any reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(8) Retain the individual applications for free milk submitted by families for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(e) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provision of this part.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); 44 U.S.C. 3506)

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31174, July 27, 1976; Amdt. 16, 43 FR 1059, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979; 46 FR 51635, Oct. 20, 1981; 47 FR 745, Jan. 7, 1982; Amdt. 30, 49 FR 18986, 18987, May 4, 1984]

§ 215.8 Reimbursement payments.

(a) [Reserved]

(b)(1) The rate of reimbursement per half-pint of milk purchased and (i) served in nonpricing programs to all children; (ii) served to all children in pricing programs by institutions and School Food Authorities not electing to provide free milk; and (iii) served to children other than needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the rate announced by the Secretary for the applicable school year. However, in no event shall the reimbursement for each half-pint (236 ml.) of milk served to children exceed the cost of the milk to the school or child care institution.

(2) The rate of reimbursement for milk purchased and served free to needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the average cost of milk, i.e., the total cost of all milk purchased during

the claim period, divided by the total number of purchased half-pints.

(c) Schools and child-care institutions having pricing programs shall use the reimbursement payments received to reduce the price of milk to children.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); Omnibus Reconciliation Act of 1980, sec. 209, Pub. L. 96-499, Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773))

[Amdt. 13, 39 FR 28416, Aug. 7, 1974, as amended by Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979; 46 FR 51365, Oct. 20, 1981; Amdt. 23, 47 FR 14134, Apr. 2, 1982]

§ 215.9 Effective date for reimbursement.

(a) A State Agency, or FNSRO where applicable, may grant written approval to begin operations under the Program prior to the receipt of the application from the School Food Authority or child-care institution. Such written approval shall be attached to the subsequently filed application, and the agreement executed by the School Food Authority or child-care institution shall be effective from the date upon which the School Food Authority or child-care institution was authorized to begin operations: *Provided, however,* That such effective date shall not be earlier than the calendar month preceding the calendar month in which the agreement is executed by the State Agency or by the Department.

(b) Reimbursement payments pursuant to § 215.8 shall be made for milk purchased and served to children at any time during the effective period of an agreement between a School Food Authority or child care institution and the State agency or the Department.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 5, 37 FR 14686, July 22, 1972; Amdt. 13, 39 FR 28417, Aug. 7, 1974; Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979]

§ 215.10 Reimbursement procedures.

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under § 215.11(c)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only milk served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS-10) for the claim month which is required under § 215.11(c)(2). Upward adjustments in Program funds claimed which are not reflected in the final FNS-10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(c) [Reserved]

(d) In submitting a Claim for Reimbursement, each School Food Authority or child-care institution shall certify that the claim is true and correct; that records are available to support the claim; that the claim is in accordance with the existing agreement; and that payment therefor has not been received.

(e) Milk served to adults is not eligible for reimbursement.

(f) Any School Food Authority or child care institution which operates both a nonpricing and pricing milk program in the same school or child care institution, may elect to claim reimbursement for:

(1) All milk purchased and served to children under the Program at the nonpricing rate prescribed in § 215.8(b) (1), or (2) only milk purchased and served to children in the pricing program at the rates prescribed in § 215.8(b) (1) and (2) for pricing programs.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); Pub. L. 97-370, 96 Stat. 1806)

[Amdt. 13, 39 FR 28417, Aug. 7, 1974, as amended by Amdt. 14, 41 FR 31175, July 27, 1976; Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; 45 FR 82622, Dec. 16, 1980; 48 FR 20896, May 10, 1983; Amdt. 30, 49 FR 18986, May 4, 1984]

§ 215.11 Special responsibilities of State agencies.

(a) [Reserved]

(b) *Program assistance.* Each State agency, or FNSRO where applicable, shall provide Program assistance, as follows:

(1) Consultive, technical, and managerial personnel to administer the Program and monitor performance of schools and child-care institutions and to measure progress toward achieving Program goals.

(2) Visits to participating schools and child-care institutions to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this title), issued under Title VI of the Civil Rights Act of 1964.

(3) Documentation of such Program assistance shall be maintained on file by the State agency, or FNSRO where applicable.

(c) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to child care institutions or School Food Authorities under § 215.8 and § 215.10 and the reports submitted to FNS under § 215.11(c)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS-10) for each month which shall be limited to claims submitted in accordance with § 215.10(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF-269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsi-

ble for reimbursing unpaid program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(d) *Compliance.* State agencies, or FNSROs where applicable, shall require School Food Authorities and child-care institutions to comply with applicable provisions of this part.

(e) *Investigations.* Each State Agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program and shall take appropriate action to correct any irregularities. State Agencies shall maintain on file evidence of such investigations and actions. The Office of Investigation of the Department (OI) shall make investigations at the request of the State Agency or if CND or FNSRO determines investigations by OI are appropriate.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); 44 U.S.C. 3506; sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 13, 39 FR 28417, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 25, 47 FR 18564, Apr. 30, 1982; Amdt. 30, 49 FR 18987, May 4, 1984]

§ 215.12 Claims against schools or child-care institutions.

(a) State agencies, or FNSROs where applicable, shall disallow any portion of a claim and recover any payment made to a School Food Authority or child-care institution that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.

(b) [Reserved]

(c) The State Agency may refer any matter in connection with this section to FNSRO and CND for determination of the action to be taken.

(d) Each State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of the final Financial Status Report, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(e) If CND does not concur with the State Agency action in paying a claim or a reclaim, or in failing to collect an overpayment FNSRO shall assert a claim against the State Agency for the amount of such claim, reclaim or overpayment. In all such cases, the State Agency shall have full opportunity to submit to CND evidence or information concerning the action taken. If in the determination of CND, the State Agency's action was unwarranted, the State Agency shall promptly pay to FNS the amount of the claim, reclaim, or overpayment.

(f) The amounts recovered by the State Agency from schools and child-care institutions may be utilized, first, to make reimbursement payments for milk served during the fiscal year for which the funds were initially available, and second, to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of § 215.5(c).

(g) With respect to schools or child-care institutions in which FNSRO administers the Program, when FNSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority or child-care institutions of the reasons for such disallowance or demand and the School Food Authority or child-care institutions shall have full opportunity to submit evidence or to file reclaim for any amount disallowed or demanded in the same manner afforded in this section to schools or child-care institutions administered by State Agencies.

(h) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claims arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section

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516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(47 FR 745, Jan. 7, 1982 (44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97-35; 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 12587, Aug. 31, 1967, as amended by Amdt. 5, 37 FR 14686, July 22, 1972; Amdt. 13, 39 FR 28418, Aug. 7, 1974; Amdt. 14, 41 FR 31175, July 27, 1976; 47 FR 745, Jan. 7, 1982; Amdt. 24, 47 FR 14133, Apr. 2, 1982]

§ 215.13 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this part obtain audits as required by Office of Management and Budget Circulars A-102 or A-110, as applicable. The term "organization", as used in this section, shall refer to the entity whose financial management system controls the receipt, custody and disbursement of the Federal grant funds made available for the Program. The audits shall ascertain the effectiveness of the financial management systems and internal procedures that have been established by the auditee organization to meet the terms and conditions of its Federal grants. It is not required that the Program covered by this part be included in every audit. Rather, the audits shall be conducted on an organization-wide basis, and shall include an appropriate random sampling of Federal grant programs administered or operated by the auditee organization. The Program covered by this part shall be adequately represented in the universe from which each such sample is selected.

(2) The State agency, or FNSRO where applicable, shall establish procedures to ensure that it obtains the following information pertaining to each School Food Authority or child-care institution organization under its jurisdiction:

(i) The names of the Federal grant programs included in each audit obtained by the School Food Authority or child-care institution pursuant to the requirements of this part, regardless of whether such programs include the Program covered by this part; and (ii) the nature of any deficiencies intrinsic to the auditee's grants management system as revealed by audit. When system deficiencies, as discussed in the preceding sentence, are reported in audits that did not specifically test the Program covered by this part, the State agency, or FNSRO where applicable, should make, or cause to be made, follow-up audits to determine the impact of such deficiencies upon the Program covered by this part. The State agency, or FNSRO where applicable, shall establish procedures to assure timely and appropriate resolution of audit findings and recommendations, including findings relating to deficiencies such as those cited in paragraph (a)(2)(ii) of this section, which may impact upon the Program covered by this part.

(3) Audits shall be made in accordance with generally accepted auditing standards, including the standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Audits may be made by any of the following audit groups:

(i) School Food Authority and State agency staff auditors who are totally independent of the auditee; (ii) State Auditors General; (iii) State Comptrollers; (iv) other comparable independent State audit groups; (v) Certified Public Accountants or (vi) State licensed public accountants.

(4) Except as provided for in this section, each organization at the State agency, School Food Authority and child-care institution level shall obtain audits, meeting the conditions discussed in this section, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than once every 2 years. The State agency, or FNSRO where applicable, may elect not to require this audit frequency of School Food Authority organizations to which *both* of the following conditions apply:

(i) The only Federal grant program or programs operated by the School Food Authority organization are the Program covered by this part, the National School Lunch Program, the School Breakfast Program, or any combination of such programs; and (ii) the level of Federal grant funds disbursed to the School Food Authority organization in any fiscal year does not exceed $10,000: *Provided, however,* That the State agency, or FNSRO where applicable, shall make or require an audit of such a School Food Authority when conditions indicate a need for such an audit. The provision of the preceding sentence does not apply to child-care institutions as defined in § 215.2(e) of this part.

(b) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary: (1) Make audits on a statewide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(c) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(d) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools and child-care institutions) of any operations of the State agency under the Program and shall provide OA with full opportunity to conduct audits (including visits to schools and child-care institutions) of all operations of the State agency under the Program. Each State agency shall make available its records, including records of the receipt and expenditure of funds under the Program, upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any school or child-care institution.

(e) In making management evaluations or audits for any fiscal year, the State agency, FNS or OA may disregard any overpayment which does not exceed $35 or, in the case of a State agency administered Program, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses generally. However, no overpayment shall be disregarded when there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[Amdt. 14, 41 FR 31175, July 27, 1976, as amended at 43 FR 58925, Dec. 22, 1978; Amdt. 23, 47 FR 14135, Apr. 2, 1982; Amdt. 25, 47 FR 18564, Apr. 30, 1982]

§ 215.13a Determining eligibility for free milk in child care institutions.

(a) *General.* Child care institutions which operate pricing programs may elect to make free milk available, as set forth in § 215.7(d)(2), to children who meet the approved eligibility criteria. Such child care institutions shall determine the children who are eligible for free milk and assure that there is no physical segregation of, or other discrimination against, or overt identification of, children unable to pay the full price for milk.

(b) *Action by State agencies and FNSROs.* Each State agency, or FNSRO where applicable, upon application for the program by a child care institution operating a pricing program, and annually thereafter, shall require the institution to state whether or not it wishes to serve free milk to eligible children at times that milk is provided under the Program. It shall annually require each child care institution electing to provide free milk to submit a free milk policy statement and shall provide such institutions with a prototype free milk policy statement and a copy of the State's family-size income standards for determining eligibility for free meals and milk under the National School Lunch and School Breakfast Programs to assist the institutions in meeting its responsibilities.

(c) *Action by institutions.* Each child care institution which operates a pricing program shall inform the State agency, or FNSRO where applicable, at the time it applies for Program participation and at least annually thereafter, whether or not it wishes to provide free milk. Institutions electing to provide free milk shall annually submit a written free milk policy statement for determining free milk eligi-

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bility of children under their jurisdiction, which shall contain the items specified in paragraph (d) of this section. Such institutions shall not be approved for Program participation of their agreements renewed unless the free milk policy has been reviewed and approved. Pending approval or a revision of a policy statement, the existing policy shall remain in effect.

(d) *Policy statement.* A free milk policy statement as required in paragraph (c) of this section shall contain the following:

(1) The specific criteria to be used in determining eligibility for free milk. These criteria shall give consideration to economic need as reflected by family size and income. The criteria used by the child-care institution may not result in the eligibility of children from families whose incomes exceed the State's family-size income standards for determining eligibility for free meals under the National School Lunch and School Breakfast Programs.

(2) The method by which the child-care institution will collect information from families in order to determine a child's eligibility for free milk.

(3) The method by which the child-care institution will collect milk payments so as to prevent the overt identification of children receiving free milk.

(4) A hearing procedure substantially like that outlined in Part 245 of this chapter.

(5) An assurance that there will be no discrimination against free milk recipients and no discrimination against any child on the basis of race, color, or national origin.

(e) *Public announcement of eligibility criteria.* Each child care institution which elects to make free milk available under the Program shall annually make a public announcement of the availability of free milk to children who meet the approved eligibility criteria to the information media serving the area from which its attendance is drawn. The public announcement must also state that milk is available to all children in attendance without regard to race, color, or national origin.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772))

[Amdt. 14, 41 FR 31176, July 27, 1976, as amended by Amdt. 16, 43 FR 1060, Jan. 6, 1978; 44 FR 10700, Feb. 23, 1979; Amdt. 17, 44 FR 33047, June 8, 1979]

§ 215.14 Nondiscrimination.

The Department's regulations on nondiscrimination in federally assisted programs are set forth in Part 15 of this title. The Department's agreements with State agencies, the State agencies' agreements with School Food Authorities and child-care institutions and the FNSRO agreements with School Food Authorities administering nonprofit private schools and with child-care institutions shall contain the assurances required by such regulations. When different types of milk are served to children, (a) a uniform price for each type of milk served shall be charged to all nonneedy children in the school or child-care institution who purchase milk, and (b) needy children shall be given the opportunity to select any type of milk offered.

(44 U.S.C. 3506)

[Amdt. 13, 39 FR 28418, Aug. 7, 1974, as amended at 47 FR 745, Jan. 7, 1982]

§ 215.14a Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A-102 and 7 CFR Part 3015, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes but is not limited to: Source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or School Food Authority may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR Part 3015.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 27, 48 FR 19355, Apr. 29, 1983]

§ 215.15 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency, or FNSRO where applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

[Amdt. 30, 49 FR 18987, May 4, 1984]

§ 215.16 Program information.

School Food Authorities and childcare institutions desiring information concerning the Program should write to their State educational agency, or the appropriate Food and Nutrition Service Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN02150, Trenton, New Jersey 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, Texas: Southwest Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75242.

(f) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, The Commonwealth of the Northern Mariana Islands and Washington: Western Regional Office, Food and Nutrition Service, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430 D, Denver, CO 80211.

(Sec. 11, Pub. L. 95-166, 91 Stat. 1337 (42 U.S.C. 1772, 1753, 1766); sec. 10(a), Pub. L.

95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626); secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785)

[Amdt. 14, 41 FR 31178, July 27, 1976, as amended by Amdt. 18, 44 FR 37898, June 29, 1979; Amdt. 27, 48 FR 195, Jan. 4, 1983]

§ 215.17 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
215.3(d)	0584-0327
215.5(a)	0584-0005 0584-0002
215.5(c)	0584-0341
215.7 (a), (c)	0584-0005
215.7 (b)(2)	0584-0026
215.7(d)	0584-0329 0584-0005
215.10 (a), (b), (d)	0584-0005 0584-0284
215.11 (b), (c)(1), (e)	0584-0005
215.11(c)(2)	0584-0002 0584-0341
215.12 (a), (d), (e), (g)	0584-0005
215.13(a)	0584-0005
215.13a(a)-(e)	0584-0026
215.14	0584-0005
215.14a(a)-(c)	0584-0005
215.15	0584-0005

[50 FR 53258, Dec. 31, 1985]

APPENDIX—APPORTIONMENT OF SPECIAL MILK PROGRAM FUNDS PURSUANT TO CHILD NUTRITION ACT OF 1966, FISCAL YEAR 1976

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended, milk assistance funds available for the fiscal year ending June 30, 1976, are apportioned among the States as follows:

State	Total apportionment	State agency	Withheld for private schools
Alabama	$2,169,198	$2,123,262	$45,936
Alaska	35,728	35,728	
Arizona	257,241	257,241	
Arkansas	1,136,150	1,093,276	42,874
California	7,301,774	7,301,774	
Colorado	929,946	856,450	73,496
Connecticut	1,778,232	1,778,232	
Delaware	285,824	285,824	
District of Columbia	146,995	146,995	
Florida	1,379,099	1,379,099	
Georgia	2,599,975	2,546,893	53,082
Hawaii	139,849	116,371	23,478
Idaho	118,413	118,413	
Illinois	6,758,710	6,758,710	
Indiana	2,723,491	2,723,491	
Iowa	1,336,226	1,336,226	
Kansas	995,279	995,279	
Kentucky	2,390,711	2,390,711	
Louisiana	835,014	835,014	
Maine	750,287	670,665	79,622
Maryland	2,525,456	2,525,456	
Massachusetts	3,561,567	3,561,567	
Michigan	4,944,750	4,944,750	
Minnesota	2,400,919	2,400,919	
Mississippi	996,300	996,300	
Missouri	2,017,099	1,935,435	81,664
Montana	204,160	169,453	34,707
Nebraska	$616,562	$526,732	$89,830
Nevada	110,246	90,246	20,000
New Hampshire	644,124	644,124	
New Jersey	4,006,636	4,006,636	
New Mexico	741,100	327,676	413,424
New York	8,967,718	8,967,718	
North Carolina	4,839,608	4,839,608	
North Dakota	289,907	258,262	31,645
Ohio	7,795,841	7,121,093	674,748
Oklahoma	955,468	955,468	
Oregon	835,013	805,410	29,603
Pennsylvania	3,551,359	3,551,359	
Rhode Island	489,983	489,983	
South Carolina	1,131,046	1,047,340	83,706
South Dakota	308,281	308,281	
Tennessee	3,131,811	3,052,189	79,622
Texas	4,478,245	4,278,168	200,077
Utah	198,035	198,035	
Vermont	407,299	407,299	
Virginia	2,286,589	2,141,636	144,953
Washington	1,471,992	1,202,501	269,491
West Virginia	483,859	483,859	
Wisconsin	3,561,567	3,561,567	
Wyoming	59,206	59,206	
Total	102,079,890	99,607,930	2,471,960

NOTE: The remainder of the $144,000,000 appropriated is distributed as follows: $889,000 for administrative expenses; $1,031,110 in reserve to meet unforeseen contingencies; and $40,000,000 proposed for rescission.

(Secs. 2, 3, 6 and 8-16, 80 Stat. 885-890; 42 U.S.C. 1771, 1772, 1775, 1777-1785)

[41 FR 7752, Feb. 20, 1976; 41 FR 9533, Mar. 5, 1976]

PART 220—SCHOOL BREAKFAST PROGRAM

Sec.

220.1 General purpose and scope.
220.2 Definitions.
220.3 Administration.
220.4 Payment of funds to States and FNSROs.
220.5 Method of payment to States.
220.6 Use of funds.

Sec.
220.7 Requirements for participation.
220.8 Requirements for breakfast.
220.9 Reimbursement payments.
220.10 Effective date for reimbursement.
220.11 Reimbursement procedures.
220.12 Competitive food services.
220.13 Special responsibilities of State agencies.
220.14 Claims against school food authorities.
220.15 Management evaluations and audits.
220.16 Procurement standards.
220.17 Prohibitions.
220.18 Suspension, termination and grant closeout procedures.
220.19 Free and reduced price breakfasts.
220.20 Program information.

APPENDIX A—ALTERNATE FOODS FOR MEALS
APPENDIX B—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE
APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

§ 220.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 4 of the Child Nutrition Act of 1966, as amended, which authorizes payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

§ 220.2 Definitions.

For the purpose of this part the term:

(a) "Act" means the Child Nutrition Act of 1966, as amended.

(b) "Breakfast" means a meal which meets the nutritional requirements set out in § 220.8 and which is served to a child in the morning hours. The meal shall be served at or close to the beginning of the child's day at school.

(c) "Child" means either: (1) In schools as defined in § 220.2(u)(1), a student of high school grade or under as determined by the State educational agency, including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped or (2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

(c-1) "Competitive foods" means any foods sold in competition with the School Breakfast Program to children in food service areas during the breakfast period.

(d) "CND" means the Child Nutrition Division of the Food and Nutrition Service of the Department.

(e) "Department" means the U.S. Department of Agriculture.

(f) "Distributing agency" means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to Part 250 of this chapter.

(g) "Fiscal year" means the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

(h) "FNS" means the Food and Nutrition Service of the Department.

(i) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department.

(i-1) "Foods of minimal nutritional value" means: (1) In the case of artificially sweetened foods, a food which provides less than 5 percent of the USRDA for each of eight specified nutrients per serving; (2) in the case of all other foods, a food which provides less than 5% of the USRDA for each of eight specified nutrients per 100 calories *and* less than 5% of the USRDA for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are: protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium and iron. Categories of foods of minimal nutritional value are listed in Appendix B of this part.

(j) "Free breakfast" means a breakfast for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(k) "Infant cereal" means any iron fortified dry cereal especially formulated and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

(l) "Infant formula" means any iron-fortified infant formula intended for dietary use solely as a food for normal healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(m) "Long-term care facility" means any hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.

(n) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(o) "National School Lunch Program" means the Program authorized by the National School Lunch Act.

(o-1) "Net cash resources" means all monies as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings or investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

(o-2) "Nonprofit school food service" means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

(p) "Nonprofit" when applied to schools or institutions eligible for the Program means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified by the Governor.

(q) "OA" means the Office of Audit of the Department.

(q-1) "OI" means the Office of Investigation of the Department.

(r) "Program" means the School Breakfast Program.

(s) "Reduced price breakfast" means a breakfast which meets all of the following criteria: (1) The price shall be less than the full price of the breakfast, (2) the price shall be 30 cents or lower, and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

(t) "Reimbursement" means financial assistance paid or payable to participating schools for breakfasts meeting the requirements of § 220.8 served to eligible children at rates assigned by the State agency, or FNSRO where applicable. The term "reimbursement" also includes financial assistance made available through advances to School Food Authorities.

(t-1) "Revenue" when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

(u) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding $1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of pre-primary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

(2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(v) "School Breakfast Program" means the program authorized by section 4 of the Child Nutrition Act of 1966.

(v-1) "School in severe need" means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(e).

(w) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has legal authority to operate a breakfast program therein.

(x) "Secretary" means the Secretary of Agriculture.

(y) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(z) "State agency" means: (1) The State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as defined in § 220.2(u)(2) of this part.

(aa) "State educational agency" means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(bb) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and

(2) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible.

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In schools which vary tuition, to determine if the average yearly tuition exceeds $1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(cc) "Special needs children" means children who are emotionally, mentally or physically handicapped.

(Sec. 6, Pub. L. 95-627, 92 Stat. 3620 (42 U.S.C. 1760); sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 220.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program covered by this part. Within FNS, CND shall be responsible for administration of the Program.

(b) Within the States, responsibility for the administration of the Program in schools as defined in § 220.2 (u)(1) and (u)(3) shall be in the State educational agency, except that FNSRO shall administer the Program with respect to nonprofit private schools as defined in § 220.2(u)(1) of any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FNSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such private schools is assumed by a State agency.

(c) Within the States, responsibility for the administration of the Program in schools as defined in § 220.2(u)(2) shall be in the State educational agency, or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools: *Provided, however,* That FNSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and *Provided, further,* That FNSRO shall also administer the Program in all other such schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such schools is assumed by a State agency.

(d) References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program.

(e) Each State agency desiring to take part in any of the programs shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Sec. 804, 816 and 817, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785); 44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended at 47 FR 745, Jan. 7, 1982; Amdt. 42, 47 FR 14133, Apr. 2, 1982]

§ 220.4 Payment of funds to States and FNSROs.

(a) To the extent funds are available, the Secretary shall make breakfast assistance payments to each State agency for breakfasts served to children under the Program. Subject to § 220.13(b)(2), the total of these payments for each State for any fiscal year shall be limited to the total amount of reimbursement payable to eligible schools within the State under this part for the fiscal year.

(b) The Secretary shall prescribe by July 1 of each fiscal year annual adjustments to the nearest one-fourth cent in the national average per breakfast factors for all breakfasts and for free and reduced price breakfasts, that shall reflect changes in the cost of operating a breakfast program.

(c) In addition to the funds made available under paragraph (a) of this section, funds shall be made available to the State agencies, and FNSROs where applicable, in such amounts as are needed to finance reimbursement rates assigned in accordance with the provisions of § 220.9(c).

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758); Pub. L. 97-370, 96 Stat. 1806)

[38 FR 35554, Dec. 28, 1973, as amended at 40 FR 30923, July 24, 1975; 46 FR 51367, Oct. 20, 1981; 48 FR 20896, May 10, 1983; Amdt. 49, 49 FR 18987, May 4, 1984]

§ 220.5 Method of payment to States.

Funds to be paid to any State for the School Breakfast Program shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall: (a) Obtain funds needed for reimbursement to School Food Authorities through presentation by designated State officials of a payment Voucher on Letter of Credit in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department; (b) submit requests for funds only at such times and in such amounts, as will permit prompt payment of claims or authorized advances; and (c) use the funds received from such requests without delay for the purpose for which drawn.

[Amdt. 25, 41 FR 34759, Aug. 17, 1976]

§ 220.6 Use of funds.

(a) Federal funds made available under the School Breakfast Program shall be used by State agencies, or FNSROs where applicable, to reimburse or make advance payments to School Food Authorities in connection with breakfasts served in accordance with the provisions of this part. However, with the approval of FNS, any State agency, or FNSRO where applicable, may reserve for use in carrying out special developmental projects an amount up to 1 per centum of the funds earned in any fiscal year under the School Breakfast Program. Advance payments to School Food Authorities may be made at such times and in such amounts as are necessary to meet current obligations.

(b) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall—

(1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or

(2) If such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(c) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (b) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[40 FR 30923, July 24, 1975, as amended by Amdt. 25, 41 FR 34759, Aug. 17, 1976; Amdt. 28, 44 FR 37899, June 29, 1979]

§ 220.7 Requirements for participation.

(a) The School Food Authority shall make written application to the State agency, or FNSRO where applicable, for any school in which it desires to operate the School Breakfast Program, if such school did not participate in the Program in the prior fiscal year. The School Food Authority shall also submit for approval, either with the application or at the request of the State agency, or FNSRO where applicable, a free and reduced price policy statement in accordance with Part 245 of this chapter. A School Food Authority which simultaneously makes application for the National School Lunch Program and the School Breakfast Program shall submit one free and reduced price policy statement which shall provide that the terms, conditions, and eligibility criteria set forth in such policy statement shall apply to the service of free and reduced price lunches and to the service of free and reduced price breakfasts. If, at the time application is made for the School Breakfast Program, a School Food Authority has an approved free and reduced price policy statement on file with the State agency, or FNSRO where applicable, for the National School Lunch Program, it need only confirm in writing that such approved policy statement will also apply to the operation of its School Breakfast Program. Applications for the School Breakfast Program shall not be approved in the absence of an approved free and reduced price policy statement.

(a-1) A school which also either participates in the National School Lunch Program or only receives donations of commodities for its nonprofit lunch program under the provisions of Part 250 of this chapter (commodity only school) shall apply the same set of eligibility criteria so that children who are eligible for free lunches shall also be eligible for free breakfasts and children who are eligible for reduced price lunches shall also be eligible for reduced price breakfasts.

(b) Applications shall solicit information in sufficient detail to enable the State agency to determine whether the School Food Authority is eligible to participate in the Program and extent of the need for Program payments.

(c) Within the funds available to them, State agencies, or FNSRO's where applicable, shall approve for participation in the School Breakfast Program any school making application and agreeing to carry out the program in accordance with this part. State agencies, or FNSRO's where applicable, have a positive obligation, however, to extend the benefits of the School Breakfast Program to children attending schools in areas where poor economic conditions exist.

(d) Any School Food Authority may employ a food service management company (or other nonprofit agency or nonprofit organization) in the conduct of its feeding operation in one or more of its schools. A School Food Authority that employs a food service management company shall remain responsible for seeing that the feeding operation is in conformance with its agreement with the State Agency or the FNS Regional Office. The contract between the School Food Authority and the food service management company shall expressly provide that:

(1) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the School Food Authority will need to meet its responsibilities under this part, and shall report thereon to the School Food Authority promptly at the end of each month;

(2) Any federally donated commodities received by the School Food Authority and made available to the food service management company shall enure only to the benefit to the School Food Authority's nonprofit school food service and be utilized therein; and

(3) The books and records of the food service management company pertaining to the School Food Authority's feeding operation shall be available for a period of 3 years from the date of the submission of the final Financial Status Report, for inspection and audit by representatives of the State agency, of the Department, and of the General Accounting Office at any reasonable time and place, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(e) The State agency, or the Department through FNSRO where applicable, shall enter into a written agreement with each School Food Authority for schools approved for participation in the School Breakfast Program. Such agreements shall provide that the School Food Authority shall, with respect to participating schools under its jurisdiction:

(1)(i) Maintain a nonprofit school food service; (ii) in accordance with the financial management system established under § 220.13(i) of this part, use all revenues received by such food service only for the operation or improvement of that food service except that such revenues shall not be used to purchase land or buildings or to construct buildings; (iii) limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency; and (iv) observe the limitations on any competitive food service as set forth in § 220.12 of this part;

(2) Serve breakfasts which meet the minimum requirements prescribed in § 220.8 during a period designated as the breakfast period by the school;

(3) Price the breakfast as a unit;

(4) Supply breakfast without cost or at reduced price to all children who are determined by the School Food Authority to be unable to pay the full price thereof in accordance with the free and reduced price policy statements approved under Part 245 of this chapter;

(5) Make no discrimination against any child because of his inability to pay the full price of the breakfasts;

(6) Claim reimbursement at the assigned rates only for breakfasts served in accordance with the agreement;

(7) Submit Claims for Reimbursement in accordance with § 220.11 of this part and procedures established by the State agency, or FNSRO where applicable;

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Purchase, in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State Agency, or CFPDO, where applicable;

(10) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(11) Maintain necessary facilities for storing, preparing, and serving food;

(12) Maintain a financial management system as prescribed by the State agency, or FNSRO where applicable;

(13) Upon request, make all accounts and records pertaining to its nonprofit school food service available to the State agency, to FNS and to OA for audit or review at a reasonable time and place. Such records shall be retained for a period of three years after the end of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit;

(14) Retain the individual application for free and reduced price breakfasts submitted by families for a period of three years after the end of the fiscal year to which they pertain; and

(15) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15).

(f) Nothing contained in this part shall prevent the State Agency from imposing additional requirements for participation in the program which are not inconsistent with the provisions of this part.

(44 U.S.C. 3506; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-647, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 34, Jan. 5, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 220.8 Requirements for breakfast.

(a)(1) Except as otherwise provided in this section, and in any appendix to this part a breakfast eligible for Federal cash reimbursement shall contain, as a minimum, the following food components in the amounts indicated:

(i) One-half pint of fluid milk served as a beverage or on cereal or used in part for each purpose.

(ii) A one-half cup serving of fruit or vegetable or both or full-strength fruit or vegetable juice.

(iii) One slice of whole-grain or enriched bread, or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour, or three-fourths cup (volume) or one ounce (weight), whichever is less of whole-grain cereal or enriched or fortified cereal, or an equivalent quantity of any combination of any of these foods.

(2) To improve the nutrition of the participating children over 1 year of age, breakfasts shall also include as often as practicable meat or meat alternates such as a one ounce serving (edible portion as served) of meat, poultry, or fish; or one ounce of cheese; or one egg; or two tablespoons of peanut butter; or an equivalent quantity of any combination of any of these foods.

(b)(1) This paragraph, in paragraph (b)(2), sets forth tne requirements for breakfasts eligible for Federal cash reimbursement which are designed to provide nutritious breakfasts for infants aged up to 1 year, and in paragraph (b)(3) of this section for children aged 1 to 6 years.

(2) When infants aged up to 1 year participate in the Program an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served. The amount of food in the breakfast may be offered to the infant during a span of time consistent with the infant's eating habits. The infant breakfast pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(i) 0 to 4 months—four to six fluid ounces of infant formula; and zero to one tablespoon of infant cereal.

(ii) 4 to 8 months—six to eight fluid ounces of infant formula; and one to three tablespoons of infant cereal.

(iii) 8 months to 1 year—six to eight fluid ounces of infant formula, or six to eight fluid ounces of whole fluid milk and zero to three fluid ounces of full-strength fruit juice; and two to four tablespoons of infant cereal.

(3) When children aged 1 year to 6 years participate in the Program, a preschool breakfast shall be offered, which shall contain, as a minimum, each of the following food components in the amounts indicated for the appropriate age group:

(i) 1 to 3 years—one-half cup of fluid milk served as a beverage or on cereal or used in part for each prupose; and a one-fourth cup serving of fruit or vegetable or both or full-strength fruit or vegetable juice; and one-half slice of whole-grain or enriched bread, or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour, or one-quarter cup (volume) or one-third ounce (weight), whichever is less, of whole-grain cereal or enriched or fortified cereal or an equivalent quantity of any combination of any of these foods.

(ii) 3 to 6 years—three-fourths cup of fluid milk served as a beverage or on cereal or used in part for each purpose; and a one-half cup serving of fruit or vegetable or both or full-strength fruit or vegetable juice; and one-half slice of whole-grain or enriched bread, or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour, or one-third cup (volume) or one-half ounce (weight), whichever is less, of whole-grain cereal or enriched or fortified cereal or an equivalent quantity of any combination of any of these foods.

(c) Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(d) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FNSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(e) FNS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic or physical needs.

(f) Substitutions may be made in foods listed in paragraphs (a) and (b) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(g) The inability of a school to obtain a supply of milk on a continuing basis to meet the breakfast requirements in paragraphs (a) and (b) of this section shall not bar it from participation in the Program. In such cases the State agency, or FNSRO were applicable, may approve the service of breakfasts without milk: *Provided, however,* That an equivalent amount of canned, whole dry, or nonfat dry milk is used in the preparation of the components of the breakfast patterns listed in paragraphs (a)(1) and (b)(3) of this section.

(h) For the period ending September 30, 1977, the Secretary, with the concurrence of officials of the Trust Territory of the Pacific Islands, shall establish a breakfast pattern or patterns which are consonant with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provide optimum nutrition consistent with sound dietary habits for participating children, for use in the Trust Territory in lieu of the breakfast patterns listed in paragraphs (a) and (b) of this section. The requirements for such patterns shall be attached to and made a part of the written agreement required under § 220.3 of this part.

(44 U.S.C. 3506)

[Amdt. 25, 41 FR 34759, Aug. 17, 1976, as amended by Amdt. 26, 41 FR 52057, Nov. 26, 1976; 47 FR 746, Jan. 7, 1982]

§ 220.9 Reimbursement payments.

(a) State agencies, or FNSRO's where applicable, shall make reimbursement payments to schools only in connection with breakfasts meeting the requirements of § 220.8 and reported in accordance with § 220.11(b) of this part. School Food Authorities shall plan for and prepare breakfasts on the basis of participation trends, with the objective of providing one breakfast per child per day. Production and participation records shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to precisely estimate the number of breakfasts needed and to reduce the resultant waste, any excess breakfasts that are prepared may be served to eligible children and may be claimed for reimbursement unless the State agency, or FNSRO where applicable, determines that the School Food Authority has failed to plan and prepare breakfasts with the objective of providing one breakfast per child per day. In no event shall the School Food Authority claim reimbursement for free and reduced price breakfasts in excess of the number of children approved for free and reduced price meals.

(b) The rates of reimbursement for breakfasts served to eligible children in schools not in severe need are the applicable national average payment factors for breakfasts. The maximum rates of reimbursement for breakfasts served to eligible children in schools determined to be in severe need are those prescribed by the Secretary. National average payment factors and maximum rates of reimbursement for the School Breakfast Program shall be prescribed annually by the Secretary in the FEDERAL REGISTER.

(c) The total reimbursement for breakfasts served to eligible children in, (1) schools not in severe need, and (2) severe need schools in State's with State Breakfast mandates as provided for in § 220.9(e)(3) (i) and (ii) in any School Food Authority during the school year shall not exceed the sum of the products obtained by multiplying the total numbers of such free, reduced price and paid breakfasts, respectively, by the applicable rate of reimbursement for each type of breakfast as prescribed for the school year.

(d) For any school year, severe need reimbursement payments to any School Food Authority except as provided for in paragraph (c) of this section shall be the lesser of: (1) The cost of providing free and reduced price breakfast to eligible children in schools determined to be in severe need, less the reduced price payments received by such schools; or (2) the number of free and the number of reduced price breakfasts, respectively, that are served to eligible children in schools determined to be in severe need, multiplied by the applicable severe need reimbursement rates for such breakfasts.

(e) *Severe need schools.* The State agency, or FNSRO where applicable, shall determine whether a school is in severe need based on the following eligibility criteria: (1) The reimbursement rate per meal established by the Secretary is insufficient to cover the costs of the school's breakfast program; (2) the school is participating in or desiring to initiate a breakfast program; and (3) 40 percent or more of the lunches served to students at the school in the second preceding school year were served free or at a reduced price. In addition, schools which are required by State law to serve breakfasts and which fail to satisfy the required 40 percent eligibility criteria are eligible for severe need reimbursement rates only for the following limited time periods:

(i) In States where the State legislature meets annually, the schools may receive severe need reimbursement rates until July 1, 1983; and (ii) in States where the State legislature meets biennially, the schools may receive severe need reimbursement rates until July 1, 1984. State agencies shall maintain on file, and have available for review and audits, their eligibility criteria for determining the severe need of schools and the source of the data to be used in making individual determinations. The State agency, or FNSRO where applicable, shall be responsible for establishing systems for determining breakfast costs where such costs are necessary to the determination of whether or not a school is in severe need.

(Sec. 6, Pub. L. 95-627, 92 Stat. 3620 (42 U.S.C. 1776; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1753, 1759(a), 1758, 1773; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); 44 U.S.C. 3506))

[Amdt. 25, 41 FR 34760, Aug. 17, 1976, as amended by Amdt. 29, 44 FR 48159, Aug. 17, 1979; Amdt. No. 38, 46 FR 50928, Oct. 16, 1981; 46 FR 51368, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982; 47 FR 31375, July 20, 1982; 48 FR 40196, 40197, Sept. 6, 1983]

§ 220.10 Effective date for reimbursement.

Reimbursement payments under the School Breakfast Program may be made only to School Food Authorities operating under an agreement with the State Agency or the Department, and may be made only after execution of the agreement. Such payments may include reimbursement in connection with breakfasts served in accordance with provisions of the program in the calendar month preceding the calendar month in which the agreement is executed.

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 16, 1972]

§ 220.11 Reimbursement procedures.

(a) To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement.

(b) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of School Program Operations required under § 220.13(b)(2). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only breakfasts served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency, or FNSRO where applicable, not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency, or FNSRO where applicable, shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS-10) for the claim month which is required under § 220.13(b)(2). Upward adjustments in

Program funds claimed which are not reflected in the final FNS-10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(c) Where a school participates in both the National School Lunch Program and the School Breakfast Program, the State agency or FNSRO, where applicable, may authorize the submission of one claim for reimbursement to cover both programs.

(d) [Reserved]

(e) Notwithstanding any other provision of this section, the State agency, or FNSRO where applicable, may advance funds available for the School Breakfast Program to a School Food Authority in an amount equal to the reimbursement estimated for the total number of breakfasts, including free and reduced price breakfasts, to be served to children for 1 month. The State agency, or FNSRO where applicable, shall require School Food Authorities who receive advances of funds under the provisions of this paragraph to make timely submissions of claims for reimbursement on a monthly basis and shall suspend advances of funds in the absence of such timely submissions. Following the receipt of claims the State agency, or FNSRO where applicable, shall make such adjustments as are necessary in such advances of funds to insure that the total amount of reimbursement received by a School Food Authority for the fiscal year will not exceed an amount equal to the number of breakfasts, including free and reduced price breakfast, served to children times the respective rates of reimbursement assigned by the State agency, or FNSRO where applicable, in accordance with § 220.9.

(Title 1 Chapter I, Pub. L. 96-38, 93 Stat. 98 (42 U.S.C. 1776a); secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773, 1757); Pub. L. 97-370, 96 Stat. 1806)

[32 FR 35, Jan. 5, 1967, as amended by Amdt. 9, 37 FR 9613, May 13, 1972; 40 FR 30924, July 24, 1975; 45 FR 82622, Dec. 16, 1980; 47 FR 31376, July 20, 1982; 48 FR 40196, Sept. 6, 1983; Amdt. 49, 49 FR 18987, May 4, 1984]

§ 220.12 Competitive food services.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with breakfasts served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the breakfast periods. The sale of other competitive foods may, at the discretion of the State agency and the School Food Authority, be allowed in the food service area during the breakfast period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and School Food Authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the School Breakfast Program.

(b)(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in Appendix B. In the case of artificially sweetened foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 220.2(i-1) that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 220.2(i-1) that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined § 220.2(i-1), and will inform the petitioner in writing of such determination, and the public by notice in the FEDERAL REGISTER as indicated under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 220.2(i-1). The petition must identify and define the food category in easily understood language, list examples of the foods contained in the category and include a list which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioner will be so notified in writing. If upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 220.2(i-1), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of the foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value.

The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the FEDERAL REGISTER as indicated under section (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department shall amend Appendix B to exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *Provided* That there are necessary changes.

(Sec. 819, Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 32, 45 FR 6771, Jan. 29, 1980, as amended by Amdt. 34, 45 FR 76937, Nov. 21, 1980; 50 FR 20547, May 17, 1985]

§ 220.13 Special responsibilities of State agencies.

(a) [Reserved]

(a-1) Each State agency, or FNSRO where applicable, shall require each School Food Authority of a school participating in the School Breakfast Program to develop and file for approval a free and reduced price policy statement in accordance with paragraph (a) of § 220.7.

(b) *Records and reports.* (1) Each State agency shall maintain Program records as necessary to support the reimbursement payments made to School Food Authorities under § 220.9 and the reports submitted to FNS under § 220.13(b)(2). The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year, except that if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Each State agency shall submit to FNS a final Report of School Program Operations (FNS-10) for each month which shall be limited to claims submitted in accordance with § 220.11(b) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF-269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year

quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(c) Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of either program, and shall take appropriate action to correct any irregularities. State Agencies shall maintain on file evidence of such investigations and actions. FNS or OI shall make investigations at the request of the State Agency or where FNS or OI determines investigations are appropriate.

(d) The State agency shall release to FNS any Federal funds made available to it under the Act which are unobligated at the end of each fiscal year. Any such funds shall remain available to FNS for the purposes of the programs authorized by the Act until expended. Release of funds by the State Agency shall be made as soon as practicable, but in any event not later than 30 days following demand by FNSRO and shall be reflected by related adjustment in the State Agency's Letter of Credit.

(e) State agencies shall provide School Food Authorities with monthly information on foods available in plentiful supply, based on information provided by the Department.

(f) Each State agency shall provide program assistance as follows:

(1) Each State agency or FNSRO where applicable shall provide consultative, technical, and managerial personnel to administer programs, monitor performance, and measure progress toward achieving program goals.

(2) [Reserved]

(3) Such assistance shall include visits to participating schools to ensure compliance with program regulations and with the Department's nondiscrimination regulations (Part 15 of this title), issued under Title VI, of the Civil Rights Act of 1964.

(4) Documentation of such assistance shall be maintained on file by the State agency, or FNSRO where applicable.

(g) State agencies shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

(h) [Reserved]

(i) Each State agency, or FNS where applicable, shall establish a financial management system under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, the cost principles contained in OMB Circular A-87 and 7 CFR Part 3015. The system shall permit determination of school food service net cash resources, and shall include any criteria for approval of net cash resources in excess of three months average expenditures. In addition, School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority.

(j) During audits, supervisory assistance reviews, or by other means, State agencies, or FNSROs where applicable, shall be responsible for monitoring the net cash resources of the nonprofit school food service of each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service, or such amount as may be approved by the State agency or FNSRO where applicable, the State agency or FNSRO where applicable, may require the School Food Authority to reduce children's prices, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, adjustments in the rates of reimbursement under the Program shall be made.

(k) State agencies shall require compliance by School Food Authorities with applicable provisions of this part.

(44 U.S.C. 3506; sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a); sec. 819,

Pub. L. 97-35, 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.13, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 220.14 Claims against school food authorities.

(a) State agencies shall disallow any portion of a claim and recover any payment made to a School Food Authority that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.

(b) [Reserved]

(c) The State agency may refer to CND through the FNSRO for determination any action it proposes to take under this section.

(d) The State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain.

(e) If CND does not concur with the State agency's action in paying a claim or a reclaim, or in failing to collect an overpayment, CND shall assert a claim against the State agency for the amount of such claim, reclaim, or overpayment. In all such cases the State agency shall have full opportunity to submit to CND evidence or information concerning the action taken. If, in the determination of CND, the State agency's action was unwarranted, the State agency shall promptly pay to FNS the amount of the claim, reclaim, or overpayment.

(f) The amounts recovered by the State agency from Schools may be utilized, first, to make payments to School Food Authorities for the purposes of the related program during the fiscal year for which the funds were initially available, and second to repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

(g) With respect to School Food Authorities of schools in which the program is administered by FNSRO, when FNSRO disallows a claim or a portion of a claim, or makes a demand for refund of an alleged overpayment, it shall notify the School Food Authority of the reasons for such disallowance or demand and the School Food Authority shall have full opportunity to submit evidence or to file reclaims for any amounts disallowed or demanded in the same manner as that afforded in this section to School Food Authorities of schools in which the program is administered by State agencies.

(h) In the event that the State agency or FNSRO, where applicable, finds that a school is failing to meet the requirements of § 220.8 (a)(1), (b)(2), and (b)(3), the State agency or FNSRO need not disallow payment or collect an overpayment arising out of such failure, if the State agency or FNSRO takes such other action as, in its opinion, will have a corrective effect.

(i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(44 U.S.C. 3506; secs. 804, 816 and 817, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771 and 1785))

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968, and amended by Amdt. 9, 37 FR 9614, May 13, 1972; 40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 47 FR 746, Jan. 7, 1982; Amdt. 42, 47 FR 14134, Apr. 2, 1982]

§ 220.15 Management evaluations and audits.

(a)(1) The State agency shall ensure that all organizations within the State that administer or participate in the Program covered by this part obtain audits as required by Office of Management and Budget Circular A-102 or A-110, as applicable. The term "organization," as used in this section, shall refer to the entity whose financial management system controls the receipt, custody and disbursement of the Federal grant funds made available for the Program. The audits shall ascertain the effectiveness of the financial management systems and internal procedures that have been established by the auditee organization to meet the terms and conditions of its Federal grants. It is not required that the Program covered by this part be included in every audit. Rather, the audits shall be conducted on an organization-wide basis, and shall include an appropriate random sampling of Federal grant programs administered or operated by the auditee organization. The Program covered by this part shall be adequately represented in the universe from which each such sample is selected.

(2) The State agency, or FNSRO where applicable, shall establish procedures to insure that it obtains the following information pertaining to each School Food Authority organization under its jurisdiction:

(i) The names of the Federal grant programs included in each audit obtained by the School Food Authority pursuant to the requirements of this part, regardless of whether such programs include the Program covered by this part; and (ii) the nature of any deficiencies intrinsic to the auditee's grants management system as revealed by audit. When system deficiencies, as discussed in the preceding sentence, are reported in audits that did not specifically test the Program covered by this part, the State agency, or FNSRO where applicable, should make, or cause to be made, follow-up audits to determine the impact of such deficiencies upon the Program covered by this part. The State agency, or FNSRO where applicable, shall establish procedures to assure timely and appropriate resolution of audit findings and recommendations including findings relating to deficiencies such as those cited in paragraph (a)(2)(ii) of this section, which may impact upon the Program covered by this part.

(3) Audits shall be made in accordance with generally accepted auditing standards, including the standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Audits may be made by any of the following audit groups:

(i) School Food Authority and State agency staff auditors who are totally independent of the auditee;

(ii) State Auditors General;

(iii) State Comptrollers;

(iv) Other comparable independent State audit groups;

(v) Certified Public Accountants or

(vi) State licensed public accountants.

(4) Except as provided for in this section, each organization at the State agency and School Food Authority level shall obtain audits, meeting the conditions discussed in this section, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than once every 2 years. The State agency, or FNSRO where applicable, may elect not to require this audit frequency of School Food Authority organizations to which *both* of the following conditions apply:

(i) The only Federal grant program or programs operated by the School Food Authority organization are the Program covered by this part, the National School Lunch Program, the Special Milk Program for Children, or any combination of such programs; and (ii) the level of Federal grant funds disbursed to the School Food Authority organization in any fiscal year does not exceed $10,000; *Provided, however,* That the State agency, or FNSRO where applicable, shall make or require an audit of such a School Food Authority when conditions indicate a need for such an audit.

(b) [Reserved]

(c) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary: (1) Make audits on a statewide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FNS with full opportunity to conduct management evaluations (including visits to schools) of all operations of the State agency under the programs covered by this part and shall provide OA with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under such programs. Each State agency shall make available its records, including records of the receipt and expenditure of funds under such programs, upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any school.

(f) In making management evaluations or audits for any fiscal year, the State agency, FNS, or OA may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses generally. However, no overpayment shall be disregarded where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

(Secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 812, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1759a))

[40 FR 30925, July 24, 1975. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976; 43 FR 59825, Dec. 22, 1978; Amdt. 41, 47 FR 14135, Apr. 2, 1982; Amdt. 43, 47 FR 18564, Apr. 30, 1982]

§ 220.16 Procurement standards.

(a) *Requirements.* State agencies and School Food Authorities shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart S (46 FR 55658) concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A-102 and 7 CFR 3015, do not relieve the State agency or School Food Authority of any contractual responsibilities under its contract. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes but is not limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or School Food Authority may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR Part 3015.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 45, 48 FR 19355, Apr. 29, 1983]

§ 220.17 Prohibitions.

(a) In carrying out the provisions of this part, neither the Department nor the State shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, and materials of instruction in any school as a condition for participation in the Program.

(b) The value of assistance to children under the Act shall not be considered to be income or resources for any purposes under any Federal or

State laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

[32 FR 37, Jan. 5, 1967. Redesignated by Amdt. 2, 33 FR 14513, Sept. 27, 1968. Redesignated and amended by Amdt. 25, 41 FR 34757, 34760, Aug. 17, 1976]

§ 220.18 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency or FNSRO were applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

[Amdt. 49, 49 FR 18988, May 4, 1984]

§ 220.19 Free and reduced price breakfasts.

The determination of the children to whom free and reduced price breakfasts are to be served because of inability to pay the full price thereof, and the serving of the breakfasts to such children, shall be effected in accordance with Part 245 of this chapter.

[Amdt. 25, 41 FR 34760, Aug. 17, 1976]

§ 220.20 Program information.

School Food Authorities desiring information concerning the program should write to their State educational agency or to the appropriate Food and Nutrition Service Regional Office as indicated below:

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN02150, Trenton, New Jersey 08650.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30367.

(c) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(d) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75202.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Island, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(f) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(g) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430 D, Denver, CO 80211.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 10(d)(3), Pub. L. 95-627, 92 Stat. 3624 (42 U.S.C. 1757); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626; secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773, and 1785))

[32 FR 37, Jan. 5, 1967. Redesignated at 49 FR 18988, May 4, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.20, see the List of CFR Sections Affected in the Finding Aids section of this volume.

APPENDIX A—ALTERNATE FOODS FOR MEALS

FORMULATED GRAIN-FRUIT PRODUCTS

1. Schools may utilize the formulated grain-fruit products defined in paragraph 3 as a food component in meeting the meal requirements of this part under the following terms and conditions:

(a) Formulated grain-fruit products may be used as an alternate to meet the bread/cereal and the fruit/juice requirements in the breakfast pattern specified in § 220.8.

(b) Only individually wrapped formulated grain-fruit products which bear a label conforming to the following legend shall be utilized: "This product conforms to USDA Child nutrition program specifications. In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FNS shall be substituted. It meets the breakfast requirements when served with one-half pint of milk. It meets the supplemental food requirements when served with one-half cup of milk, juice, fruit, or vegetable." The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement, as described by FDA in 21 CFR 80.1.

2. Only formulated grain-fruit products that have been accepted by the Food and Nutrition Service (FNS) for use in the USDA child nutrition programs may be labeled as provided in paragraph 1.(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of one year. Such information shall be made available to FNS upon request.

3. To be accepted by FNS, products must have the following characteristics and meet the following nutritional specifications:

(a) Types. There are two types of products: one is a grain-type product and the other a grain-fruit type product.

(b) Ingredients. A grain-type product shall have grain as its primary ingredient. A grain-fruit type product shall have fruit as its primary ingredient. Both types of products must have at least 25 percent of their weight derived from grain. All ingredients and/or components shall comply with pertinent requirements or standards of the USDA and the Food, Drug, and Cosmetic Act, as amended, and any regulations issued thereunder.

(c) Nutritional specifications. Each serving of the product shall meet the minimum compositional requirements in the following table. The requirements as specified for those nutrients not limited by maximum values will be deemed to have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient at such concentration that the level specified will be substantially exceeded in the final product. Such excess will be permitted but no lable claim of nutritional advantage can be made for overages for any nutrients. Analytical methods employed should be according to the standard procedures defined in the Association of Official Analytical Chemists, 1970, "Official Methods of Analysis," 11th edition, Washington, D.C. or by appropriate analytical procedures FNS considers reliable.

NUTRITIONAL LEVELS OF GRAIN-FRUIT PRODUCTS [1]

Nutrient	Unit	Minimum	Maximum
Weight	Ounce	2	4.0
PER	Casein = 2.5	2.0	
Moisture	Percent weight		40.0
Fat [2]	do		22.0
Fiber	do		0.8
Protein (N × 6.25)	Gram	5.0	
Energy	Kilocalorie	250	
Vitamin A [3]	International unit	1,115	1,675.0
Vitamin E	do	5	
Vitamin B_{12}	Microgram	1.25	
Thiamin	Milligram	.26	
Riboflavin	do	.13	
Vitamin B_6	do	.26	
Vitamin C	do	20	
Niacin	do	2.65	
Folacin	do	.04	
Iron [4]	do	4.4	
Calcium	do	120	
Phosphorus	do	120	
Magnesium	do	30	

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[1] These specifications are based on a nutrient level for acceptable products plus ½ pint of fluid milk (as defined in § 220.2 of the regulations (7 CFR Part 220)) to provide at least 25 percent of the Recommended Dietary Allowances

(RDA), 1968, for 10- to 12-year-old boys and girls for specified nutrients except magnesium and kilocalories. Magnesium and kilocalories—at least 13 percent of this RDA.

[2] Although the maximum fat in these specifications is 22 percent, consideration should be given to the development of formulated items containing less fat. Most medical authorities recommend keeping the dietary intake of fats at about ⅓ of the day's calories. At least 5 percent of the total calories shall be from linoleic acid.

[3] Vitamin A levels above the maximum of 1,675 I.U. will be allowed in products containing this nutrient as a natural food, and if the vitamin has not been added to the ingredients or foods.

[4] Recommended sources of iron are ferric ammonium citrate, ferrous fumarate, ferrous sulfates ($FeSO_4$ or $FeSO_4$ $7H_2O$), ferrous gluconate, reduced iron, or other sources known to have a similar relative biological value.

(Secs. 804, 816, 817, and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785))

[Amdt. 18, 39 FR 11249, Mar. 27, 1974, as amended at 40 FR 37027, Aug. 25, 1975; Amdt. 45, 48 FR 195, Jan. 4, 1983]

APPENDIX B—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE

(1) *Soda water.* As defined by 21 CFR 165.175 Food and Drug Administration Regulations, except no product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals, and proteins.

(2) *Water ices.* As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) *Chewing gum.* Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) *Certain candies.* Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types:

(a) *Hard candy.* A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(b) *Jellies and gums.* A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(c) *Marshmallow candies.* An aerated confection composed of sugar, corn syrup, invert sugar, 20% water and gelatin or egg white to which flavors and colors may be added.

(d) *Fondant.* A product consisting of microscopic-sized sugar crystals which are separated by a thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(e) *Licorice.* A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(f) *Spun candy.* A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(g) *Candy coated popcorn.* Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

Schedule for Amending Appendix B

Actions for publication	Publication	
	May	November
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day Comment Period.	Feb 1 through Apr. 1.	Aug. 1 through Oct. 1.
Public Notice of Amendment of Appendix B by.	May 1	Nov. 1.

Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Divisions, FNS, USDA, Alexandria, Virginia 22302 on or before November 15 or May 15 of each year. Petitions must include all information specified in § 210.15b(b) (1) or (2), and § 220.12(b) (1) or (2) as appropriate.

(Sec. 17, Pub. L. 95-166, 91 Stat. 1345 (42 U.S.C. 1779); secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785))

[Amdt. 32, 45 FR 6772, Jan. 29, 1980, as amended at 45 FR 72081, Oct. 31, 1980; 45 FR 76937, Nov. 21, 1980; Amdt. 45, 48 FR 195, Jan. 4, 1983]

APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries

Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

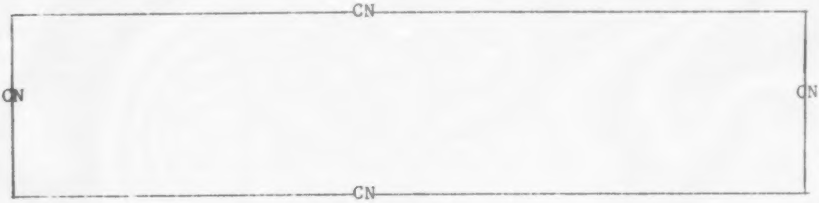
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) the "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The "CN label statement" includes the following:

(1) The product identification number (assigned by FNS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:

CN

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CN This 3.00 oz serving of raw beef pattie provides when cooked 2.00 oz equivalent meat for Child Nutrition Meal Pattern Requirements. (Use of this logo and statement authorized by the Food and Nutrition Service, USDA 05-84.) CN

CN

(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or

USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices;

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984]

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.

225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—Assistance to States

225.4 Payments to State agencies and use of Program funds.
225.5 Commodity assistance.

Subpart C—State Agency Provisions

225.6 Program management and administration plan.
225.7 State agency responsibilities.
225.8 Program applications.
225.9 Program monitoring and assistance.
225.10 Records and reports.
225.11 Program payments.
225.12 Audit and management evaluation.
225.13 Corrective action procedures.
225.14 Claims against sponsors.
225.15 Appeal procedures.
225.16 Procedures for food service management companies.
225.17 Procurement standards.

Subpart D—Provisions for Sponsors

225.18 Requirements for sponsor participation.

Sec.
225.19 Operational responsibilities of sponsors.
225.20 Meal service requirements.
225.21 Free meal policy.

Subpart E—Miscellaneous Provisions

225.22 Other provisions.
225.23 Program information.
225.24 Information collection/recordkeeping—OMB assigned control numbers.

APPENDIX A—ALTERNATE FOODS FOR MEALS
APPENDIX B—[RESERVED]
APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 803, 807, 809, 816 and 817, Pub. L. 97-35, secs. 203 and 206, Pub. L. 96-499, secs. 5, 7, 10, Pub. L. 95-627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95-166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91-248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

SOURCE: 47 FR 6793, Feb. 16, 1982, unless otherwise noted.

Subpart A—General

§ 225.1 General purpose and scope.

This part announces the policies and prescribes the regulations under which the Secretary will carry out a Summer Food Service Program to assist States through grants-in-aid to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

§ 225.2 Definitions.

"*Act*" means the National School Lunch Act, as amended.

"*Administrative costs*" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

"*Advance payments*" means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

"*Areas in which poor economic conditions exist*" means (1) the local areas from which a site draws its attendance in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined (i) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (ii) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (iii) from other appropriate sources, or

(2) An enrollment program in which at least 50 percent of the children at the site are eligible for free or reduced price school meals as determined by statements of eligibility based on the sizes and incomes of the families of the children enrolled.

"*Camps*" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

"*Children*" means (1) persons 18 years of age and under, and (2) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

"*Continuous school calendar*" means a situation in which all or part of the student body of a school are (1) on a vacation for periods of 15 continuous school days or more during the period October through April and (2) in attendance at regularly scheduled classes during most of the period May through September.

"*Costs of obtaining food*" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

"*Department*" means the U.S. Department of Agriculture.

"*Fiscal year*" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"*FNS" means the Food and Nutrition Service of the Department.*

"*FNSRO*" means the appropriate FNS Regional Office.

"*Food service management company*" means any commercial enterprise or nonprofit organization which contracts with a sponsor to manage any aspect of the food service program. Food service management companies may be (1) public agencies or entities; (2) private, nonprofit organizations; or (3) private, for-profit companies.

"*Income accruing to the program*" means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source, including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

"*Meals*" means food which is served to children at a food service site and which meets the nutritional requirements set out in this part.

"*Milk*" means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

"*Needy children*" means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

"*OIG*" means the Office of the Inspector General of the Department.

"*Operating costs*" means the cost of operating a food service under the Program,

(1) Including (i) cost of obtaining food, (ii) labor directly involved in the preparation and service of food, (iii) cost of nonfood supplies, (iv) rental and use allowances for equipment and space, and (v) costs for transporting children in rural areas to feeding sites in rural areas, but

(2) Excluding (i) the cost of the purchase of land, acquisition or construction of buildings, (ii) alteration of existing buildings, (iii) interest costs, (iv) the value of in-kind donations, and (v) administrative costs.

"*Private nonprofit*" means tax exempt under the Internal Revenue Code of 1954, as amended.

"*Program*" means the Summer Food Service Program for Children authorized by section 13 of the Act.

"*Program funds*" means Federal financial assistance made available to State agencies for the purpose of making Program payments.

"*Program payments*" means financial assistance in the form of start-up payments, advance payments or reimbursement paid to sponsors for operating and administrative costs.

"*Rural*" means (1) any area in a county which is not a part of a Standard Metropolitan Statistical Area or (2) any "pocket" within a Standard Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

"*School Food Authority*" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools.

"*Secretary*" means the Secretary of Agriculture.

"*Self-preparation*" means the sponsor prepares the meals which will be served at its site(s), and does not contract with a food service management company for the preparation of all or a portion of the meals.

"*Session*" means a specified period of time during which an enrolled group of children attend camp.

"*Site*" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

"*Special account*" means an account between a sponsor and a food service management company with a State or federally insured bank in which checks from the State agency for operating costs are deposited by the sponsor and released only in accordance with the terms of the special account agreement.

"*Sponsor*" means a public or private nonprofit school food authority; public or private nonprofit residential summer camp; or unit of local, municipal, county or State government, which develops a special summer or other school vacation program providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. (Sponsors are referred to in the Act as "service institutions".)

"*Start-up payments*" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative costs payments.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"*State agency*" means the State educational agency or an alternate State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or in States where FNS administers the Program, FNSRO.

"*Unit of local, municipal, county or State government*" means an entity which is so recognized by the State constitution or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws which delineate authority for government responsibility in the State.

§ 225.3 Administration.

(a) FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that if FNSRO has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State, unless a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, in which case the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency. A State in which FNS administers the Program may upon request to FNS, assume administration of the Program. Each State agency shall notify the Department by November 1 of the fiscal year involved as to whether or not it intends to administer the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in the State in accordance with the provisions of this part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR Part 15), issued under Title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

(d) In States in which FNSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part.

Subpart B—Assistance to States

§ 225.4 Payments to State agencies and use of Program funds.

(a) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.11(c)(11). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS.

(2) Not later than May 15, FNS shall make available, if necessary, additional funds in a Letter of Credit to ensure that at least 65 percent of the Program operating and administrative funds estimated to be needed for the summer in the State's approved management and administration plan has been provided to each State.

(3) Not later than July 1, FNS shall make available, if necessary, in a Letter of Credit an amount sufficient to ensure that at least 65 percent of the Program operating and administrative funds determined during the evaluation required in § 225.12(c) to be needed for the summer has been provided to the State. Funds made available in these Letters of Credit shall be used by the State agency to make program payments to sponsors, FNS may make appropriate changes in the amounts included in these Letters of Credit based on any information available upon which determinations of actual Program size may be made.

(b) *Continuous school calendar.* The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsor serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(c) *Remaining funds.* FNS shall make available any remaining Program funds due within 45 days of the receipt of valid Claims or Reimbursement from sponsors by the State agency. However no payment shall be made for claims submitted later than 60 days after the month covered by the claim unless an exception is granted by FNS.

(d) *Return of funds.* Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *State administrative funds.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to (1) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year; (2) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year; (3) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and (4) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year: *Provided, however,* That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS. If a State agency fails to submit timely and accurate reports under § 225.10(c) of this part, State administrative funds payable under this paragraph shall be subject to sanction. For such failure, FNS may recover, withhold or cancel payment of up to one hundred percent of the funds payable to the State agency under this paragraph during the fiscal year.

(f) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(g) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FNS shall make available to each participating State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (e) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) The remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in § 225.12(c) (but not later than September 1) and shall be in an amount equal to that determined to be needed during the funding evaluation, less the amounts paid under paragraphs (g) (1) and (2) of this section.

(h) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (e) of this section to the total amount of Program payments made within the State during the prior fiscal year, or, 80 percent of the amount obtained by applying the formula to the amount of Program funds estimated to be needed in the management and administration plan. The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under this part.

(i) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(j) *Adjustment of Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(k) *Health inspection funds.* Each fiscal year, FNS shall make available by Letter of Credit to each State agency an amount equal to one percent of Program funds expended in the preceding fiscal year in the State. Following approval of the State's management and administration plan, FNS shall make available in a Letter of Credit any additional funds necessary to ensure that 1 percent of Program funds estimated to be needed for Program payments in the State's management and administration plan is available to the State. These funds shall be used solely to enable State or Local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. An adjustment may be made in the amount provided for in this paragraph based on the evaluation required in § 225.12(c), if such an adjustment is warranted. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

(Sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766))

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 2464, Jan. 20, 1984]

§ 225.5 Commodity assistance.

(a) Sponsors eligible to receive commodities under the Program include only those which prepare the meals to be served at their sites and those which have entered into an agreement with a school or school district for the preparation of meals. The State agency shall make available to these sponsors information on available commodities.

(b) Not later than June 1 of each year State agencies shall prepare a list of the names of sponsors which are eligible to receive commodities. The list shall indicate the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the information included on the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it determines necessary.

Subpart C—State Agency Provisions

§ 225.6 Program management and administration plan.

(a) Not later than February 15 of each year, except that for fiscal year 1982 no later than March 15, each State Agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15, or if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.4(h).

(c) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(d) The Plan shall include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, and its plans and schedule for informing service institutions of the availability of the Program;

(3) The State's best estimate of the number and character of service institutions and sites to be approved, and of meals to be served and children to participate for the fiscal year, and a description of the estimating methods used;

(4) The State's plans and schedule for providing technical assistance and training to eligible service institutions;

(5) The State's schedule for application by service institutions;

(6) The actions to be taken to maximize the use of meals prepared by service institutions and the use of school food service facilities;

(7) The State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(8) The State's plan and schedule for registering food service management companies;

(9) The State's plan for timely and effective action against Program violators;

(10) The State's plan for determining the amounts of Program payments

to service institutions and for disbursing such payments;

(11) The State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary; and

(12) The State's procedure for granting a hearing and prompt determination to any service institutions wishing to appeal a State ruling, as specified in § 225.15.

(E.O. 12372, July 14, 1982, 47 FR 30959, sec. 401(b) of the Intergovernmental Cooperation Act of 1968, 31 U.S.C. 6506(c))

[47 FR 6793, Feb. 16, 1982, as amended at 48 FR 29123, June 24, 1983]

§ 225.7 State agency responsibilities.

(a) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this part are met.

(b) Each State agency shall inform all of the previous year's sponsors which meet current eligibility requirements and all potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline date for Program application submission.

(c) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.15.

(d) The State agency shall determine the eligibility of applicant sponsors (and their sites) applying for participation in the Program in accordance with the applicant sponsor and site eligibility criteria outlined in § 225.18.

(e) The State agency shall review each applicant's administrative budget as a part of the application approval process, in order to assess the applicant's ability to operate in compliance with these regulations within its projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(f) State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: (1) It is a residential camp, or (2) it proposes to provide a food service for the children of migrant workers, or (3) a failure to do so would deny the Program to an area in which poor economic conditions exist, or (4) a significant number of needy children will not otherwise have reasonable access to the Program.

(g) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the eligibility requirements for free and reduced price school meals.

(h) The State agency shall use the following order of priority in approving applicants to operate sites which propose to serve the same area or the same enrolled children:

(1) Applicants which are public or nonprofit private school food authorities and other applicants which have demonstrated successful Program performance in a prior year;

(2) Applicants which propose to prepare meals at their own facilities or which operate only one site;

(3) Applicants which propose to utilize local school food service facilities for the preparation of meals;

(4) Other applicants which have demonstrated ability for successful Program operations; and

(5) Applicants which plan to integrate the Program with Federal, State, or local employment or training programs.

(i) When evaluating a proposed food service site, the State agency shall ensure that:

(1) If not a camp, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2;

(2) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; and

(3) The site is approved to serve no more than the number of children for which its facilities are adequate.

(j) When approving an application, the State agency shall establish for each meal service an approved level for the maximum number of meals which may be served under the Program for each site which will serve meals prepared by a food service management company. These approved levels shall be established in accordance with the following provisions:

(1) The initial maximum approved level shall be based upon the historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available.

(2) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(3) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(4) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(5) Upon approval of its application or any adjustment of maximum approved levels, the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing level for meal orders at that site. The sponsor shall adjust meal orders with the objective of serving only one meal per child, as required under § 225.19(d), when the number of children attending is below the site's approved level.

(k) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.11(b), and where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.11(a).

(l) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless it can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(m) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient in its Program operations. The official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Serious deficiencies which are grounds for nonapproval are described in § 225.13(c).

(n) Pending the outcome of a review of a denial the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (h) of this section, without regard to the application under review.

(o) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or knowingly withholds information which may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

§ 225.8 Program applications.

(a) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FNS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.7(b). At a minimum, the application shall include the items listed below:

(1) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

(i) An organized and supervised system for serving meals to attending children;

(ii) The estimated number and types of meals to be served and the times of service;

(iii) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(iv) Arrangements for food service during periods of inclement weather;

(v) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(vi) The geographic area to be served by the site;

(vii) The percentage of children in the area to be served by the site who meet the eligibility requirements for free or reduced price school meals; and

(viii) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended.

(2) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist.

(i) For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization, which supports eligibility for those children as a group, and

(ii) When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites applicants shall only be required to obtain new documentation every other year.

(3) Prior to filing their Claims for Reimbursement for each session or at such time as specified by the State agency, camps shall submit to the State agency family size and income information which documents the number of children enrolled in each session who meet the eligibility requirements for free or reduced price school meals.

(4) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.18, and the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, an administrative and operating

budget, and a staffing and monitoring plan.

(5) A complete administrative budget for State agency review and approval. The budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate under the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(6) A plan for and a synopsis of its invitation to bid for food service, if a bid is required under § 225.16.

(7) A free meal policy statement, as required in § 225.21.

(8) For each applicant which seeks approval under § 225.18(a)(3) (as a unit of local, municipal, county or State government), certification that it will directly operate the Program in accordance with § 225.18(b)(9).

(b) Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.20 during period designated as the meal service period by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are *not* served meals under the Program;

(4) Issue a policy statement in accordance with § 225.21;

(5) Meet the training requirement for its administrative and site personnel, as required under § 225.19(i);

(6) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who are eligible for free or reduced price school meals. The agreement shall specify the approved levels of meal service for the sponsor's sites for which approved levels have been established as required under § 225.7(j); no permanent changes may be made in the serving time of any meal unless the changes are approved by the State agency;

(7) Submit claims for reimbursement in accordance with procedures established by the State agency, and those States in § 225.11;

(8) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance will all applicable State and local laws and regulations;

(9) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(10) Have access to facilities necessary for storing, preparing, and serving food;

(11) Maintain a financial management system as prescribed by the State agency;

(12) Maintain on file documentation of site visits and reviews in accordance with § 225.19 (g) and (h);

(13) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. These records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigation findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(14) Maintain children on site while meals are consumed; and

(15) Retain final financial and administrative responsibility for its program.

(c) Each State agency shall require applicant sponsors submitting Program application site information sheets, Program agreements or a request for advance payments, and sponsors submitting claims for reimbursement, to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(d) Within two weeks of receiving notification of their approval, but in any case prior to commencement of operation under the Program, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(e) In addition, the State agency may require any sponsor which contracts with a food service management company to enter into an agreement with the State agency to provide that the sponsor shall establish a special account with a State agency or Federally insured bank for operating costs payable to the sponsor by the State. The special account agreement shall specify that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain such other terms, agreed to by both the sponsor and the food service management company, which are consistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank for the account described in this section shall be considered an allowable sponsor administrative cost.

[47 FR 6793, Feb. 16, 1982; 47 FR 15309, Apr. 9, 1982]

§ 225.9 Program monitoring and assistance.

(a) *Program availability.* By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a listing of potential sponors which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farmworkers which qualify for the Program and shall actively seek eligible applicant sponsors to serve such areas. States shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. The State agency shall encourage potential sponsors to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(b) *Training.* Each State agency shall plan for and carry out Program training for sponsors, food service management company representatives, auditors, and health inspectors which will participate in the Program in that State. Prior to Program operations, each State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall be structured and scheduled to reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize sponsors which have previously participated in the Program in such training, and in the training of site personnel regarding their responsibilities. Training should be made available at convenient locations. Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration for representatives from each food service management company and each health department which will participate in the Program in the current year.

(c) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to prepare adequately for their participation in the Program.

(d) *Food specifications and meal quality standards.* With the assistance

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of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of the contracts between sponsors and food service management companies.

(e) *Program monitoring and assistance.* The State agency shall conduct Program monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites, as specified below, to assess the applicant sponsor's or site's potential for successful Program operations and verify information provided in the application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the Program in the prior year;

(ii) All applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit;

(iii) All proposed nonschool sites with an expected average daily attendance of 300 children or more which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites to ensure compliance with Program regulations, the Department's nondiscrimination regulations (7 CFR Part 15) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum, consider whether the sponsor participated or whether the site was used or reviewed in prior years, the performance of the sponsor or site in prior years, the performance of other sites operated by the same sponsor in prior years and the current year, and the performance of the applicable sponsor in prior years and the current year. Reviews shall be conducted as follows:

(i) For the following types of sponsors, State agencies shall conduct both a review of sponsor operations and review an average of 15 percent of their sites during the first four weeks of the sponsor's operations:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year, and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) The State agency shall review the following types of sponsors and sites not reviewed under subparagraph (2)(i) of this paragraph at least once during the period of Program operations:

(A) All remaining sponsors of 10 or more sites and an average of at least 15 percent of their sites, and

(B) 70 percent of all sponsors of fewer than 10 sites and an average of 10 percent of their sites.

(3) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(4) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the appropriate food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(5) *Records.* Documentation of Program assistance and results of such assistance shall be maintained on file by the State agency.

(6) *Food preparation facility visits.* As a part of the review of any sponsor which contracts with a food service management company for the preparation of meals, the State agency shall inspect the facilities of the food service management company. Each State agency shall establish an order of priority for visiting facilities at which food is prepared to be served in the Program. The State agency shall respond promptly to complaints concerning facilities with potential problems. Funds provided for in § 225.4(k) may be used for this purpose.

(7) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, time of reviewer's arrival and departure, site supervisor's signature, certification statement to

be signed by monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, and corrective actions taken by sponsor and date of such actions.

(8) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (e)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sonsors as specified in paragraph (e)(2) of this section.

(9) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.13. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(f) *Food quality and preparation facility inspections.* The State agency shall make a positive effort to ensure that inspections of food preparation facilities and food service sites, including meal quality tests, are conducted. The procedures for carrying out the inspections and tests shall be consistent with procedures used by local health authorities. For inspections of facilities of food service management companies not conducted by State agency personnel, copies of the results of the inspections shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required.

(g) *Financial management.* Each State agency shall establish a financial management system, in accordance with Office of Management and Budget Circulars A-102 and A-87 and FNS guidance, to identify allowable Program costs and establish standards for sponsor recordkeeping and reporting. The State agency shall provide guidance on these financial management standards to each sponsor.

(h) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or the Secretary of Agriculture, Washington, DC 20250. A State agency which has an established grievance or complaint handling procedure may resolve sex and handicap discrimination complaints before referring a report to FNS.

(42 U.S.C. 6101 *et seq.*)

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 14078, Apr. 10, 1984]

§ 225.10 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF-269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or

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appeal conducted, as required under § 225.15, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) By December 15 of each year the State agency shall provide FNS with information on the scope of Program operations within the State.

(c) Each State agency shall submit to FNS a final report on the Summer Food Service Program Operations (FNS-44) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made without FNS authorization, regardless of when it is determined that such adjustments need to be made. Adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF-269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. Action may be taken against the State agency, in accordance with § 225.4(e), for failure to submit accurate and timely reports.

(d) The State agency must submit to FNS a final Financial Status Report no later than 120 days after the end of the fiscal year, on a form (SF-269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves of such an increase it will make payment, subject to the availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.14(d), except that amounts recovered may not be used to make Program payments.

(e) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning in each food service management company which applied to the State agency for registration for that calendar year's Program. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

(Secs. 13, 17, National School Lunch Act as amended by Pub. L. 97-307; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766))

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 2464, Jan. 20, 1984]

§ 225.11 Program payments.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to assist sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraphs (b) (1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.* (i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligile for the second advance payment, the sponsor must have conducted training sessions for its own personnel and site personnel covering Program duties and responsibilities. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment: (A) The total operating costs paid to the sponsor for the same calendar month in the preceding year, or (B) for sponsors contracting with a food service management company, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for sponsors preparing their own meals, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.* (i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will operate under the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one-third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for ten or more days only in one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one-half, and no more than two-thirds, of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.14.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid claim for reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid claim for reimbursement.

(c) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agree-

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ment with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from combined operating and administrative costs. The State agency may make full or partial reimbursement upon receipt of a claim for reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its proceding claim or, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(2) Sponsors which operate less than 10 days in the final month of operations shall submit a combined claim for the final month and the immediate preceding month within 60 days of the last day of operation.

(3) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(4) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide Reports of Summer Food Service Program Operations required under § 225.10(c). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support this claim. The cost of meals served to adults performing necessary food service labor may be included in the claim. Furthermore, the State agency may choose to allow sponsors to include the cost of disallowed children's meals, in accordance with § 225.13(e) (1) and (2), in its report of operating costs on its claim for reimbursement. In no case shall the cost of meals in excess of the site's approved level of meal service established under § 225.7(j) be considered allowable.

(5) A final claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days after the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within the 60 day deadline shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the month covered by the claim and are reflected in the final Program Operations Report (FNS-44). Upward adjustments in Program funds claimed which are not reflected in the final FNS-44 for the month covered by the claim cannot be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(6) Payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor, or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 85.75 cents for each lunch or supper, 47.75 cents for each breakfast and 22.50 cents for each supplement. These are base rates of reimbursement, not current rates, and must be adjusted in accordance with paragraph (c)(8) of this section.

(7) Payments to a sponsor for administrative cost shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by 6.75 cents for each lunch or supper, 3.50 cents for each breakfast and 1.75 cents for supplements, except that sponsors shall be eligible to receive an additional 1.50 cents for each lunch or supper, 1.00 cents for each breakfast, and .50 cents for each supplement served to participating children at rural or self-preparation sites. All rates in this paragraph are base rates of reimbursement, not current rates, and must be adjusted in accordance with paragraph (c)(8) of this section.

(8) Each January 1, FNS shall publish a notice in the FEDERAL REGISTER announcing any adjustment to the reimbursement rates described in paragraphs (c) (6)(ii) and (7)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for free or reduced-price meals is documented. Any nonresidential camp reduced to fewer than four meal types per day under the terms of § 225.13(d) shall receive reimbursement only for those meals served to children eligible for free or reduced-price school meals.

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement.

(d) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(e) The sponsor shall not claim reimbursement for meals served at any sites in excess of the site's approved level of meal service, if one has been established under § 225.7(j). In reviewing a sponsor's claim, the State agency may limit payments to the sponsor according to the approved level for meal service which may be claimed for reimbursement at the sponsor's sites, as provided for in § 225.7(j).

(Secs. 13, 17, National School Lunch Act as amended by Pub. L. 97-307; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766))

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 2464, Jan. 20, 1984]

§ 225.12 Audit and management evaluation.

(a) *Audits.* Audits of sponsors shall be conducted in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), and Office of Management and Budget Circulars A-102 and A-110, as applicable. State agencies shall provide OIG with full opportunity to audit the State agency and sponsors. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request from OIG. While OIG shall rely to the fullest extent feasible upon State-sponsored audits of sponsors, it shall, when considered necessary, (1) make audits on a State-wide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(b) State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to sponsors) of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS.

(c) In addition to any management evaluation, FNSRO shall collect data on the need for Program and State administrative funding within any State agency if the funding needs estimated in a State's management and administration plan are no longer accurate. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under § 225.4(g) to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and collected during the period of Program operations, but no later than August 20. Immediately following this data collection, payment of State administrative funds shall be made to the State agency. The payment may reflect adjustments in the level of State administrative funding, based on the information collected. FNS shall not decrease the amount of a State's administrative funds unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(d) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation.

(e) FNSRO may require the State agency to submit on 30 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(f) In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

§ 225.13 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* Except as specified below, the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. The State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

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(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sites which include, but are not limited to, the following:

(i) Noncompliance with the between meal time requirements;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* The State agency shall restrict to one meal service per day (1) any food service site which is determined to be in violation of the time restrictions for meal service included in § 225.20(a) when corrective action is not taken within a reasonable time as determined by the State agency, and (2) all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions included in § 225.20(a). If this action results in children not receiving any meals under the Program, the State agency shall make reasonable effort to locate another source of meal service for the children.

(e) *Meal disallowances.* (1) Meal disallowances for improper planning. If the State agency determines that a sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow as meals served to children the number of meals prepared or ordered in excess of the number of children served.

(2) Meal disallowances for violations of meal service requirements. If the State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow any meals which are in excess of a site's approved level established under § 225.7(j).

(4) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken. Paragraph (f) of this section indicates actions the State agency shall undertake if corrective action has not been taken.

(f) *Termination of sites.* (1) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the State agency and specified in the review report.

(2) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(3) Within 48 hours of terminating a site, the State agency shall, if applicable, notify the food service management company providing meals to the site of the termination.

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§ 225.14 Claims against sponsors.

(a) The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in § 225.12(f). However, the State agency shall notify the sponsor of the reasons for the disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the sponsor for the return of improper payments;

(2) If after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested;

(3) If after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested; and

(4) If after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor, in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determine that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be utilized (1) to make Program payments to sponsors for the period for which the funds were initially available, and (2) to repay the State for any of its own funds used to make payments on claims for reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

§ 225.15 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant requesting a review of a denial of an application for participation, a denial of a request by a sponsor for an advance payment, a denial of a claim by a sponsor for reimbursement (except for late submission under § 225.11(c)(5)), a denial by the State agency to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim, a claim against a sponsor for remittance of a payment, the termination of the sponsor or a site, a denial of a sponsor's application for a site, a denial of a food service management company's application for registration, or revocation of a food service management company's registration. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.11(c)(5).

(b) At a minimum, the procedures for those reviews shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the sponsor or food service management company has the right to appeal the action of the State;

(2) The sponsor or food service management company be advised in writing that the request for review must be made within a specified time and must meet the requirement of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date of receipt of the notice of action;

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(3) The appellant be afforded the opportunity to review any information upon which the action was based;

(4) The appellant may refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the request for review, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. The appellant may retain legal counsel, or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing shall be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraph (b)(5) of this section;

(8) The review official shall be independent of the original decision-making process;

(9) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate under the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued operation under the Program shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in § 225.15(a):

(1) To each potential sponsor upon application, and

(2) To each food service management company upon application for registration under § 225.16(c).

(d) A record regarding each review shall be kept by the State agency, as required under § 225.10(a). The record shall document the State agency's compliance with these regulations and shall include the basis for the decision.

(Sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766))

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 2465, Jan. 20, 1984]

§ 225.16 Procedures for food service management companies.

(a) Any sponsor may contract with a food service management company for the preparation of unitized meals with or without milk or juice. In all cases, the sponsor shall adhere to the procurement standards indicated in

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§ 225.17. All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing prior to advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(b) Any sponsor which contracts with a food service management company shall be responsible for ensuring that the food service operation is in conformity with its agreement with the State agency and all the applicable provisions of this part. No sponsor may contract out for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications.

(c) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, except that a school or school food authority acting as a food service management company and a food service management company which has an exclusive contract with a school or school food authority for year-round service (and no contracts with other sponsors) shall not be required to register with the State. The procedures for registration of all other food service management companies are as follows:

(1) By February 1, each State agency shall notify each food service management company which participated in the Program in either of the prior two years in the State that it must register with the State agency. This notification shall include, at a minimum:

(i) A statement that registration with the State agency is a prerequisite to participation in the Program during the fiscal year;

(ii) A list of the items which must be submitted in the application for registration as set forth in subparagraph (c)(2) of this section;

(iii) A complete description of the criteria developed by the State agency for determining registrant eligibility; and

(iv) Any other information necessary to apply for registration.

In addition, each State agency shall by the same date issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(2) With the exceptions described in the first sentence of this paragraph, each food service management company shall register with the State by March 15 of each fiscal year. At a minimum, registration shall require:

(i) Submission of name and mailing address and any other names under which such food service management company presently or in the past two years has marketed its services;

(ii) A certification that the food service management company meets applicable State and local health, safety, and sanitation standards;

(iii) Disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program;

(iv) Records of contract terminations, disallowances, and health, safety, and sanitation code violations related to prior Program participation during the past two years;

(v) Records of any other contract terminations and health, safety, and sanitation code violations during the past two years;

(vi) The address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the local officials responsible for the operation of the facilities;

(vii) The number of meals which can be prepared in each preparation facility in a twenty-four hour period for use in the Program;

(viii) A certification that the food service management company will operate in accordance with current Program regulations;

(ix) A statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company; and

(x) Submission of a Certified Public Accountant's audit report if an audit was performed during the prior year and,

(xi) A statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business,

(A) In which the management and daily operations of the business are controlled by a member or members of a minority group; and

(B) At least 51 percent of which is owned by a member or members of a minority group; (*1*) if the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; (*2*) if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group. Minority groups are Blacks, Hispanics, American Indians, Alaskan Native, Orientals and Aleuts.

(3) A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year, if the State agency determines and documents that the lack of registration could result in a significant number of needy children not having reasonable access to the Program.

(4) Prior to registration, the State agency shall provide for inspections of all food service management companies' food preparation facilities listed on the applications for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that the facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of meals for use in the Program. The State agency may waive this inspection requirement if a facility was registered last summer and operated in accordance with Program requirements.

(5) No food service management company shall be registered by the State agency if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which do not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with a prior Program operation.

(6) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statutes.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination on the application within 30 calendar days after receipt of the complete application. The official making the determination of denial must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.10(e).

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(d) In the absence of any applicable State of local laws governing bid procedures and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities which have an exclusive contract with food service management companies for year-round service and sponsors whose total contracts with food service management companies will not exceed $10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that normally accepted bidding procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to competitive bidding procedures shall ensure, at a minimum, that:

(1) All proposed contracts shall be publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement shall include the time and place of the bid opening;

(2) The bids shall be publicly opened; and

(3) The State agency is notified at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening.

(4) When advertising for bids, the sponsor shall adhere to the following requirements, at a minimum:

(i) The invitation to bid shall not specify a minimum price;

(ii) The invitation to bid shall contain a cycle menu approved by the State agency upon which the bid shall be based;

(iii) The invitation to bid shall contain food specifications and meal quality standards approved by the State agency upon which the bid shall be based;

(iv) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(v) Neither the invitation to bid nor the contract shall provide for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(vi) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service.

(5) A copy of the food service management company registration determination issued by the State agency shall be submitted by the food service management company with each bid;

(6) Sponsors shall submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen;

(7) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(e) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. (Sponsors which are public institutions and sponsors exempt from the competitive bid procedures described in paragraph (d) of this section may use their existing or usual form of contract, if such form of contract has been submitted to and approved by the State agency.) The standard contract developed by the State agency shall expressly and without exception provide that:

(1) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site (established under § 225.7(j)), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(2) The food service management company shall maintain such records

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(supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall report to the sponsor promptly at the end of each month, at a minimum;

(3) The food service management company shall have State of local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. Results of the inspections shall be submitted to the sponsor and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(5) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department, and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract;

(6) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(10) All meals served under the Program shall meet the requirements of § 225.20;

(11) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs the sponsor incurs by obtaining meals from another source; and

(12) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments made by the State agency to the sponsor in accordance with the conditions given in § 225.8(e), the contract shall so specify.

(13) The food service management companies shall submit all costs incurred pertaining to the sponsor's food service operation in sufficient time to allmw the sponsor to prepare and submit the claim for reimbursement to meet the 60 day submission deadline.

(f) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal.

(g) Each State agency shall have a representative present at all procurement bid openings of sponsors which expect to receive more than $100,000 in Program payments.

(h) The State agency may require any sponsor which contracts with a food service management company to establish a special account in a State or Federally insured bank for the deposit of Program payments for operating costs. The special account shall be such that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company, and shall be in accordance with the other specifications included in § 225.8(e).

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(i) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations.

(j) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(k) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the bond within ten days of the awarding of the contract.

(l) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570.

(m) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.22(b). If a food service management company fails to take the actions recommended to correct violations noted by the State agency or health inspectors in the conducting of a review or inspection, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification.

(Sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766))

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 2465, Jan. 20, 1984]

§ 225.17 Procurement standards.

(a) State agencies and sponsors which are Federally recognized Indian tribal governments or entities of local governments (such as some school districts, elementary and secondary schools, and public park authorities) shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A-102 in the procurement of food, supplies, goods, and other services with Program payments.

(b) All sponsors other than those identified in paragraph (a) of this section shall comply with the standards prescribed in Attachment O of Office of Management and Budget Circular A-110 in the procurement of food, supplies, goods, and other services with Program payments.

(c) The State agency shall make available to sponsors information on Office of Management and Budget Circulars A-102 and A-110, as appropriate.

(d) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with the approval of FNS, to prevent fraud, waste, and Program abuse.

(e) The State agency shall ensure that all sponsors are aware of the following practices specified in OMB Circular A-102, with respect to minority business enterprises:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

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(5) Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprise of the Department of Commerce as required.

Subpart D—Provisions for Sponsors

§ 225.18 Requirements for sponsor participation.

(a) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps; and

(3) Units of local, municipal, county, or State governments.

(b) *Requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service.

(2) Has not been seriously deficient in operating the Program.

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualifies as a camp.

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site including adequate personnel to conduct the visits and reviews required in § 225.19 (g) and (h).

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.7(f);

(6) Certifies that all sites have been visited and have the capability and the facilities for the meal service planned for the number of children anticipated to be served;

(7) If not a camp, provides documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2. If a camp, certifies that it will collect family size and income information to support its claim for reimbursement;

(8) If a summer school is open to serve children in addition to those enrolled in the accredited school program or is a school serving children outside of the summer school hours; and

(9) Each applicant described under § 225.18(a)(3) shall only be approved to provide the Program at sites which it certifies will be directly operated by the applicant. Such direct operation means that the applicant will be responsible for: (i) Managing site staff, including such areas as hiring, conditions of employment, and termination and (ii) the management of the Program operations at sites during the period of Program participation.

(c) *Applications.* Applicants shall make written application to the State agency for participation in the Program as sponsors. Such application shall be made on a timely basis in accordance with the requirements of § 225.8.

(d) *Agreements.* Each sponsor shall enter into a written agreement with the State agency upon approval of its application, as required in § 225.8(b).

(e) *Meal services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with paragraphs (f) and (g) of this section.

(f) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which qualify for free and reduced price meals under the guidelines established for the National School Lunch Program (7 CFR Part 210). The sponsor shall maintain a copy of the family size and income documentation of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(1) A camp may serve up to four meals each day.

(2) Residential camps are not subject to the time restrictions for meal service given in § 225.20(a)(1).

(3) A camp shall be approved to serve these meals only if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the serv-

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ice period of the different meals does not coincide or overlap.

(g) *Sites other than camps and those serving migrant children.* Food service sites other than camps shall serve children in areas where poor economic conditions exist, as defined in § 225.2. A sponsor which operates in accordance with this part shall receive reimbursement for all meals served to children at these sites in accordance with this part. Food service sites other than camps and those which primarily serve migrant children may serve either (1) one meal each day, a breakfast, a lunch, or a supplement, or (2) two meals each day, if one is a lunch and the other is a breakfast or a supplement.

(h) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2. A sponsor which operates in accordance with this part shall receive reimbusement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability and, where applicable, adequate food preparation and holding facilities, and if the service period of the different meals does not coincide or overlap.

(i) No site shall be eligible to participate in both this Program and the Special Milk Program (7 CFR Part 215).

[47 FR 6793, Feb. 16, 1982; 47 FR 15310, Apr. 9, 1982]

§ 225.19 Operational responsibilities of sponsors.

(a) Sponsors shall operate the food service in accordance with the provisions of this part and any instructions and handbooks issued by FNS under this part or issued by the State agency which are not inconsistent with the provisions of this part.

(b) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities, or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(c) Upon approval of its application or any adjustment in the approved levels of meal service for its sites, established under § 225.7(j), the sponsor shall inform the food service management company with which the sponsor contracts of the approved level for each meal service at each site for which the food service management company will provide meals.

(d) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.7(j), this means that the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. In no case shall the sponsor order or prepare meals for any site in excess of the site's approved level. Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals within the approved level for the site that are prepared or ordered may be served to children and claimed for reimbursement unless the State agency determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal. In no case shall the sponsor order or prepare meals for any site in excess of its approved level, established in accordance with § 225.7(j).

(e) Sponsors shall submit claims for reimbursement in accordance with this part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(f) Sponsors shall maintain accurate records which justify all costs and meals claimed. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

(g) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(h) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(i) Each sponsor shall hold training sessions for its administrative and site personnel with regard to Program duties and allow no site to operate until personnel have attended at least one of these training sessions. Training of site personnel, at a minimum, shall include: the purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(j) Sponsors shall not claim reimbursement under Parts 210, 215, 220, or 226 of this chapter, or any other federally-funded program for meals served under the Program.

(Sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766))

[47 FR 6793, Feb. 16, 1982, as amended at 49 FR 2465, Jan. 20, 1984]

§ 225.20 Meal service requirements.

(a) *Time restrictions for meal service.* (1) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this paragraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals for each meal service which are not prepared at the food service site shall be delivered within one hour of the beginning of the appropriate meal service unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State of local health regulations.

(6) The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency.

(b) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall

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ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program.

BREAKFAST [1]

(1) The minimum amount of food components to be served as breakfast are as follows:

[See footnotes at the end of Table]

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	½ cup.[1]
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup (4 fl. oz.)
Bread and Bread Alternates [2]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.[3].	1 serving.
or	
Cold dry cereal [4]	¾ cup or 1 oz.
or	
Cooked cereal or cereal grains	½ cup.
or	
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk [5]	
Milk, fluid	1 cup (½ pint, 8 fl. oz).
Meat and Meat Alternates (*Optional*)	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	¼ cup.
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 tbsp.

[1] For the purposes of the requirement outlined in this subsection, a cup means a standard measuring cup.

[2] Bread, pasta or noodle products, and cereral grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.

[3] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

[4] Either volume (cup) or weight (oz.), whichever is less.

[5] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

LUNCH OR SUPPER [1]

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	2 oz.
or	
Cheese	2 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.[1]
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	4 tbsp.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)[2].	¾ cup total.
Bread and Bread Alternates[3]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving.[4].
or	
Cooked pasta or noodle products.	½ cup.
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk	
Milk, fluid, served as a beverage	1 cup (½ pint, 8 fl. oz.).

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[2] Serve 2 or more kinds of vegetable(s) and/or fruit(s) or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

[3] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[4] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

SUPPLEMENTAL FOOD

(3) The minimum amounts of food components to be served as supple-

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[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section.

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mental food are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or polutry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	1/2 cup.[1]
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 tbsp.
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	3/4 cup.
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	3/4 cup (6 fl. oz.)
Bread and Bread Alternates[2]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc[3].	1 serving.
or	
Cold dry cereal[4]	3/4 cup or 1 oz.
or	
Cooked cereal	1/2 cup.
or	
Cooked pasta or noodle products.	1/2 cup.
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	1/2 cup.
Milk[5]	
Milk, fluid	1 cup (1/2 pint, 8 fl. oz.).

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.

[3] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

[4] Either volume (cup) or weight (oz.), whichever is less.

[5] Milk should be served as a beverage or on cereal, or used in part for each purpose.

(c) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement. The Department will provide guidance to State agencies on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate, it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(d) *Varying amounts.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (b) of this section to children under six years of age if the State agency determines that the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. In such cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(e) *Infant meal patterns.* Sponsors approved to serve children under one year of age shall be required to comply with the applicable meal requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(f) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

(g) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(h) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in the tables included in this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(i) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: a serving of a starchy vegetable, such as ufi, tanniers, yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(j) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (b) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(k) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, insofar as practicable, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(o) *Additional provision.* The State agency may allow sponsors which serve meals prepared in schools participating in the National School Lunch or School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

§ 225.21 Free meal policy.

(a) As part of the application, applicants shall submit a statement of their policy for serving free meals at all sites under their jurisdiction. No application may be approved unless its accompanying policy statement is approved. The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(b) In addition, the policy statement for camps that charge separately for meals and other programs not eligible under § 225.2 (paragraph (1) of "areas in which poor economic conditions exist") shall include the following:

(1) A statement that the eligibility standards conform to the Secretary's family size and income standards for free and reduced-price school meals;

(2) A description of the method for accepting applications;

(3) A description of the method used by camps for collecting payments from children who pay the full price of the meal while protecting the anonymity of children receiving a free meal.

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(4) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals which provides for the following:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appealed both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate notice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(5) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered;

(6) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap.

(c) Each sponsor shall annually announce in the media serving the area from which it draws its attendance, the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (1) of "areas in which poor economic conditions exist") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (1) of "areas in which poor economic conditions exist") shall include the Secretary's family-size and income standards for free and reduced-price meals and shall state that meals are available without regard to race, color, national origin, sex, age, or handicap.

(d) For the purpose of determining eligibility for free meals, camps and other programs not eligible under § 225.2 (paragraph (1) of "areas in which poor economic conditions exist") shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced-price eligibility with an explanation that households with incomes less than or equal to these values would be eligible for free meals. Such forms and descriptive material may not contain the income standards for free meals. The application shall include the social security numbers of all adult members of the household or an indication that an adult household member does not possess one.

(1) The application shall also contain the following statement, "Sections 9 and 13 of the National School Lunch Act require that in order for your child to be eligible for Program meals, you must provide the social security numbers of all adult members

of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for Program meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. The verification efforts may be carried out through Program reviews, audits, and investigations, and may include contacting employers to determine income, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies and sponsors shall ensure that the notice complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses; and

(2) The signature of the parent or guardian who has completed the application.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758); (42 U.S.C. 6101 *et seq.*))

[47 FR 6793, Feb. 19, 1982, as amended at 48 FR 375, Jan. 4, 1983; 49 FR 14078, Apr. 10, 1984]

Subpart E—Miscellaneous Provisions

§ 225.22 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachment K of the Office of Management and Budget Circular A-110 (41 FR 32016, July 30, 1976), or Attachment L of the Office of Management and Budget Circular A-102 (42 FR 45828, September 12, 1977), whichever is applicable.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds.

(2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program.

(3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received

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under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

§ 225.23 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, TX 75202.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 80211.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550

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Kearny Street, Room 400, San Francisco, CA 94108.

§ 225.24 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
225.3(b)	0584-0057
225.5(b)	0584-0057
225.6(a)	0584-0057
225.7(k)	0584-0057
225.8(a)	0584-0017
225.8(b)	0584-0057
225.9 (a), (d), (f), (g)	0584-0057
225.9(e)	0584-0023
225.10(a)	0584-0280
225.10(b)	0584-0057
225.11(c)	0584-0041
225.12(a)	0584-0057
225.14(a)	0584-0057
225.15(a)	0584-0057
225.16 (a), (c), (e), (i)	0584-0057
225.16(c)(6)	0584-0061
225.17	0584-0057
225.18(f)	0584-0280
225.19(f)	0584-0280
225.21(a)(b)	0584-0057
225.21(b)(4)	0584-0280
225.22(b)(2)	0584-0057

[50 FR 53258, Dec. 31, 1985]

APPENDIX A—ALTERNATE FOODS FOR MEALS

VEGETABLE PROTEIN PRODUCTS

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in §210.10, §225.10 or §226.21 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble as well as substitute, in part, for one of these major protein foods. Substitute, refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in §210.10, §225.10 or §226.21.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §§210.10, 225.10, and 226.21 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate foods authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble and substitute, in part, for meat, poultry or seafood, as specified in paragraph 1 must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

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(b) The types of vegetable protein products described in paragraph 2.(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a flour, the blank is to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a " protein concentrate", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a " protein isolate" or " isolated protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut."

(c) Compliance with the moisture and protein provisions of paragraph 2.(b) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(d) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall be labeled in conformance with applicable sections of § 102.76, tentative final regulations published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472). Adopted for the purpose of this regulation are the following:

(1) The common or usual names for a vegetable protein product used to resemble and substitute, in part, for meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term e.g., "granules," when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable."

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (i.e., flour, concentrate, isolate) in the ingredient statement of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2.(b) (1), (2) and (3), may include a term which accurately describes the physical form of the product, e.g., "granules" when such term is appropriate.

(e) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall meet the following nutritional specifications adopted from § 102.76 (f)(1)(ii)(*a*)(*b*) tentative final regulations, published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472).

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, determined by performing a Protein Efficiency Ratio (PER) assay or unless FNS grants an exception by approving an alternate test.

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood).

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (micrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(4) Compliance with the nutrient provisions set forth in paragraph 2.(e) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble and substitute, in part, for meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA-FNS requirements for use in meeting a portion of the meat/meat alternate requirement of the child nutrition programs." This statement shall appear on the principal display panel area of the package.

(g) It is recommended that for vegetable protein products to be used to resemble and substitute, in part, for meat, poultry or seafood and labeled as specified in paragraph 2.(f) of this appendix, manufacturers pro-

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vide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.10 or § 226.21 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs." (outlined in paragraph 2. of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2. of this appendix. The presence of this label does not insure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

(National School Lunch Act, secs. 9, 13, 17, 42; U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 225.10, 226.21)

[48 FR 781, Jan. 7, 1983; 48 FR 2115, Jan. 18, 1983]

APPENDIX B—[RESERVED]

APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

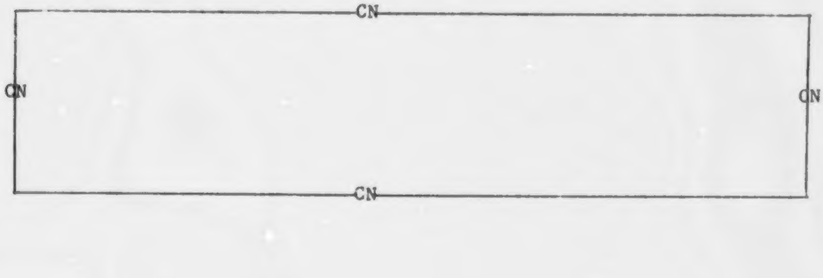
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) the "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



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(c) The "CN label statement" includes the following:

(1) The product identification number (assigned by FNS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:

CN

000000

CN This 3.00 oz serving of raw beef pattie provides when cooked 2.00 oz equivalent meat for Child Nutrition Meal Pattern Requirements. (Use of this logo and statement authorized by the Food and Nutrition Service, USDA 05-84.) CN

CN

(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of

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the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices;

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984]

PART 226—CHILD CARE FOOD PROGRAM

Subpart A—General

Sec.

226.1 General purpose and scope.
226.2 Definitions.
226.3 Administration.

Subpart B—Assistance to States

226.4 Payments to States and use of funds.
226.5 Donation of commodities.

Subpart C—State Agency Provisions

226.6 State agency administrative responsibilities.
226.7 State agency responsibilities for financial management.
226.8 Audits.

Subpart D—Payment Provisions

226.9 Assignment of rates of reimbursement for centers.
226.10 Program payment procedures.
226.11 Program payments for child care centers and outside-school-hours care centers.

Sec.

226.12 Administrative payments to sponsoring organizations for day care homes.
226.13 Food service payments to sponsoring organizations for day care homes.
226.14 Claims against institutions.

Subpart E—Operational Provisions

226.15 Institution provisions.
226.16 Sponsoring organization provisions.
226.17 Child care center provisions.
226.18 Day care home provisions.
226.19 Outside-school-hours care center provisions.
226.20 Requirements for meals.
226.21 Food service management companies.
226.22 Procurement standards.
226.23 Free and reduced-price meals.

Subpart F—Food Service Equipment Provisions

226.24 Property management requirements.

Subpart G—Other Provisions

226.25 Other provisions.
226.26 Program information.
226.27 Information collection/recordkeeping—OMB assigned control numbers.
APPENDIX A—ALTERNATE FOODS FOR MEALS
APPENDIX B—[RESERVED]
APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

AUTHORITY: Secs. 803, 810 and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758, 1766) sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

SOURCE: 47 FR 36527, Aug. 20, 1982, unless otherwise noted.

Subpart A—General

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in nonresidential institutions which provide child care. The Program is intended to enable child care institutions to integrate a nutritious food service with organized child care services for enrolled children. Payments will be made to State agencies

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or FNS Regional Offices to enable them to reimburse institutions for food service to children.

§ 226.2 Definitions.

"*Act*" means the National School Lunch Act, as amended.

"*Administrative costs*" means costs incurred by an institution related to planning, organizing, and managing a food service under the Program, and allowed by the State agency financial management instruction.

"*Adult*" means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.

"*Advanced payments*" means financial assistance made available to an institution for its Program costs prior to the month in which such costs will be incurred.

"*CCFP child care standards*" means the Child Care Food Program child care standards developed by the Department for alternate approval of child care centers, outside-school-hours care centers, and day care homes by the State agency under the provisions of § 226.6(d)(2) through (4).

"*Child care center*" means any public or private nonprofit organization, or any proprietary Title XX center, as defined in this section ("Proprietary Title XX center"), licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for handicapped children. Child care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

"*Child care facility*" means a licensed or approved child care center, day care home, or outside-school-hours care center under the auspices of a sponsoring organization.

"*Children*" means (a) persons 12 years of age and under, (b) children of migrant workers 15 years of age and under, and (c) mentally or physically handicapped persons, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.

"*Claiming percentage*" means the ratio of the number of enrolled children in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled children in the institution.

"*Current income*" means income received during the month prior to application for free or reduced-price meals and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

"*Day care home*" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

"*Department*" means the U.S. Department of Agriculture.

"*Documentation*" means the completion of the following information on a free and reduced-price application: (a) Total current household income; (b) names of all household members; (c) social security numbers of all adult household members or an indication that a household member does not possess one; and (d) signature of an adult member of the household.

"*Enrolled child*" means a child whose parent or guardian has submitted to an institution a signed document which indicates that the child is enrolled for child care.

"*Family*" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

"*Fiscal Year*" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

"*FNS*" means the Food and Nutrition Service of the Department.

"*FNSRO*" means the appropriate Regional Office of the Food and Nutrition Service.

"*Food service equipment assistance*" means Federal financial assistance formerly made available to State agencies to assist institutions in the purchase or rental of equipment to enable institutions to establish, maintain or expand food service under the Program.

"*Food service management company*" means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.

"*Free meal*" means a meal served under the Program to a child from a family which meets the income standards for free school meals and for which neither the child nor any member of his family pays or is required to work in the food service program.

"*Household*" means "family", as defined in § 226.2 ("Family").

"*Income standards*" means the family-size and income standards prescribed annually by the Secretary for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

"*Income to the program*" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; children's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants organizations or individuals.

"*Independent center*" means a child care center or outside-school-hours center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

"*Infant cereal*" means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

"*Infant formula*" means any iron-fortified infant formula, intended for dietary use as a sole source of food for normal, healthy infants served in liquid state at manufacturer's recommended dilution.

"*Institution*" means a sponsoring organization, child care center, or outside-school-hours care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

"*Meals*" means food which is served to enrolled children at an institution or child care facility and which meets the nutritional requirements set forth in this part.

"*Milk*" means pasteurized fluid types of unflavored or whole flavored milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (8 months up to 1 year of age), "milk" means unflavored whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

"*Nonpricing program*" means an institution in which there is no separate identifiable charge made for meals served to enrolled children.

"*Nonprofit Food Service*" means all food service operations conducted by the institution principally for the benefit of enrolled children, from which all of the Program reimbursement funds are used solely for the operation or improvement of such food service.

"*Nonresidential*" means that the same children are not maintained in care for more than 24 hours on a regular basis.

"*OIG*" means the Office of the Inspector General of the Department.

"*Operating costs*" means expenses incurred by an institution in serving meals to children under the Program,

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and allowed by the State agency financial management instruction.

"*Outside-school-hours care center*" means a public or private nonprofit organization, or a proprietary Title XX center, as defined in this section ("Proprietary Title XX center"), licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

"*Personal property*" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence such as patents, inventions, and copyrights.

"*Pricing program*" means an institution in which a separate identifiable charge is made for meals served to enrolled children.

"*Program*" means the Child Care Food Program authorized by Section 17 of the National School Lunch Act, as amended.

"*Program payments*" means financial assistance in the form of start-up payments, advance payments, or reimbursement paid or payable to institutions for operating costs and administrative costs.

"*Proprietary Title XX center*" means any private, for profit center (a) providing nonresidential day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of the enrolled children during the calendar month preceding initial application or annual reapplication for Program participation.

"*Reduced-price meal*" means a meal served under the Program to a child from a family which meets the income standards for reduced-price school meals. Any separate charge imposed shall be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a supplement, and for which neither the child nor any member of his family is required to work in the food service program.

"*Reimbursement*" means Federal financial assistance paid or payable to institutions for Program costs within the rates assigned by the State agency.

"*School year*" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

"*Sponsoring organization*" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (a) One or more day care homes; (b) a child care center or outside-school-hours care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers or outside-school-hours care centers; or (d) and combination of child care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more care centers and outside-school-hours care centers which are part of the same legel entity as the sponsoring organization, and which are proprietary Title XX centers, as defined in this section ("Proprietary Title XX center").

"*Start-up payments*" means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding a food service program in day care homes and initiating successful Program operations.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"*State agency*" means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the Department to administer the Program within the State or in States in which FNS administers the Program, FNSRO.

"*Title XX*" means Title XX of the Social Security Act.

"*Uniform Federal Assistance Regulations*" means the Department's regulations, 7 CFR Part 3015, establishing Department-wide policies and standards for administration of grants and cooperative agreements.

"*Verification*" means: (a) A review of the information reported by institutions to the State agency regarding the eligibility of enrolled children for free or reduced-price meals; and (b) in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the Program. Verification for a pricing program shall include confirmation of income eligibility or current participation in the Food Stamp Program; and, at State discretion, verification may also include confirmation of household size.

(Secs. 803, 819, Pub. L. 97-35, 95 Stat. 524 (42 U.S.C. 1758))

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21529, May 13, 1983; 48 FR 41142, Sept. 14, 1983; 50 FR 19310, May 8, 1985]

§ 226.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that if FNS has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. This agreement shall cover the operation of the Program during the period specified therein and may be extended by consent of both parties.

(d) FNSRO shall, in each State in which it administers the Program, have available all funds and assume all responsibilities of a State agency as set forth in this part.

Subpart B—Assistance to States

§ 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS shall make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part. Funds shall be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e) and (h) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part shall not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (h) and (j) of this section.

(b) *Center funds.* For meals served to children in child care centers and outside-school-hours care centers, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to children from families that do not satisfy the income standards for free and reduced-price school meals enrolled in institutions by the national average payment rate for breakfasts for such children under section 4 of the Child Nutrition of Act of 1966;

(2) The number of breakfasts served in the Program within the State to children from families that satisfy the income standards for free school meals enrolled in institutions by the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

(3) The number of breakfasts served to children from families that satisfy the income standard for reduced-price school meals enrolled in institutions by the national average payment rate for reduced-price school breakfasts under section 4 of the Child Nutrition Act of 1966;

(4) The number of lunches and suppers served in the Program within the

State by the national average payment rate for lunches under section 4 of the National School Lunch Act. (All lunches and suppers served in the State are funded under this provision);

(5) The number of lunches and suppers served in the Program within the State to children from families that satisfy the income standard for free school meals enrolled in institutions by the national average payment rate for free lunches under section 11 of the National School Lunch Act;

(6) The number of lunches and suppers served in the Program within the State to children from families that satisfy the income standard for reduced-price school meals enrolled in institutions by the national average payment rate for reduced-price lunches under section 11 of the National School Lunch Act;

(7) The number of supplements served in the Program within the State to children from families that do not satisfy the income standards for free and reduced-price school meals enrolled in institutions by 2.75 cents;

(8) The number of supplements served in the Program within the State to children from families that satisfy the income standard for free school meals enrolled in institutions by 30 cents;

(9) The number of supplements served in the Program within the State to children from families that satisfy the income standard for reduced-price school meals enrolled in institutions by 15 cents.

(c) *Day care home funds.* For meals served to children in day care homes, funds shall be made available to each State agency in an amount no less than the sum of products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State by 47.75 cents;

(2) The number of lunches and suppers served in the Program within the State by 93.5 cents;

(3) The number of supplements served in the Program within the State by 28 cents.

(d) *Administrative funds.* For administrative payments to day care home sponsoring organizations, funds shall be made available to each State agency in an amount not less than the product obtained each month by multiplying the number of day care homes participating under each sponsoring organization within the State by the applicable rates specified in § 226.12(a)(3).

(e) *Start-up funds.* For start-up payments to eligible sponsoring organizations, funds shall be made available to each State agency in an amount equal to the total amount of start-up payments made in the most recent period for which reports are available for that State or on the basis of estimates by FNS.

(f) *Funding assurance.* FNS shall ensure that, to the extent funds are appropriated, each State has sufficient Program funds available for providing start-up and advance payments in accordance with this part.

(g) *Rate adjustments.* FNS shall publish a notice in the FEDERAL REGISTER to announce each rate adjustment. FNS shall adjust the following rates on the specified dates:

(1) The rates for meals served in day care homes shall be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest $.0025 based on changes measured over the most recent twelve-month period for which data are available.

(2) The rate for supplements served in child care centers and outside-school-hours care centers shall be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest $.0025 based on changes measured over the most recent twelve-month period for which data are available.

(3) The rate for administrative payments to day care home sponsoring organizations shall be adjusted annually, on July 1, on the basis of changes in the series for all items of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be

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made to the nearest dollar based on changes measured over the most recent twelve-month period for which data are available.

(h) *Audit funds.* For the expense of conducting audits and reviews under § 226.8, funds shall be made available to each State agency in an amount equal to two percent of the Program reimbursement provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. The amount of assistance provided to a State under this paragraph in any fiscal year may not exceed the State's expenditures under § 226.8 during such fiscal year.

(i) *Method of funding.* FNS shall authorize funds for State agencies in accordance with the Uniform Federal Assistance Regulations.

(j) *Special developmental projects.* The State agency may use in carrying out special developmental projects an amount not to exceed one percent of Program funds used in the second prior fiscal year. Special developmental projects shall conform to FNS guidance and be approved in writing by FNS.

§ 226.5 Donation of commodities.

(a) USDA foods available under section 6 of this Act, section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 1431), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or other authority, and donated by the Department shall be made available to each State.

(b) The value of such commodities (or cash-in-lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions, other than sponsoring organizations for day care homes which are not receiving commodities, in that State during that school year by the rate for commodities or cash-in-lieu thereof established for that school year under the provisions of section 6(e) of this Act.

Subpart C—State Agency Provisions

§ 226.6 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency shall provide sufficient consultative, technical and managerial personnel to administer the Program, provide sufficient training and technical assistance to institutions and monitor performance to facilitate expansion and effective operation of the Program.

(b) *Application approval.* Each State agency shall establish an application procedure to determine the eligibility under this part of applicant institutions, and facilities for which applications are submitted by sponsoring organizations. State agencies, by written consent of the State agency and the institutions, shall renew agreements with institutions not less frequently than annually. A State agency may not execute an agreement to be effective during two fiscal years but may nevertheless establish an ongoing renewal process for the purpose of reviewing and approving applications from participating institutions throughout the fiscal year. As a minimum, such application approval process shall include:

(1) Renewal of the Program agreement;

(2) For child care centers and outside-school-hours care centers, submission of current family size and income information on enrolled children;

(3) For sponsoring organizations of day care homes, submission of the current total number of children enrolled, and an assurance that day care home providers' children enrolled in the Program are eligible for free or reduced-price meals;

(4) Issuance of a nondiscrimination policy statement and media release;

(5) For sponsoring organizations, submission of a management plan;

(6) Submission of an administrative budget;

(7) Submission of documentation that all child care centers, outside-school-hours care centers, and day care homes for which application is made are in compliance with Program licensing/approval provisions;

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(8) For proprietary Title XX centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under Title XX of the Social Security Act, and certification that not less than 25 percent of enrolled children in each such center during the most recent calendar month were Title XX beneficiaries;

(9) Statement of institutional preference to receive commodities or cash-in-lieu of commodities;

(10) Institutional choice to receive all, part, or none of advance payment. Any institution applying for participation in the Program shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If an institution submits an incomplete application, the State agency shall notify the institution within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application. Any disapproved applicant shall be notified of its right to appeal under paragraph (j) of this section.

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution which the State agency determines to have been seriously deficient at any time in its operation of any Federal child nutrition program. However, the State agency may enter into an agreement with such an institution when with FNS concurrence it determines that the deficiencies have been corrected. The State agency shall terminate the program agreement with any institution which it determines to be seriously deficient. However, the State agency shall afford an institution every reasonable opportunity to correct problems before terminating the institution for being seriously deficient. The State agency shall notify FNS whenever it has denied an application from or terminated the participation of a seriously deficient institution. This notification shall be made within 15 days of the review official's decision upholding the State's action or, if the institution elects not to appeal the decision, within 15 days of the expiration of the appeal right. FNS will maintain a list of these institutions and will notify all other State agencies of these institutions' ineligibility to participate in the program. FNS may determine independently that an institution has been seriously deficient in its operation of any Federal child nutrition program and include such institution on the list of ineligible institutions if appropriate corrective action is not taken. State agencies shall not enter into an agreement with any institution included on this list of ineligible institutions and shall terminate any participating institution included on the list within 30 days of the receipt of notification by FNS of the institution's ineligible status. Once included on this list, an institution shall be ineligible to participate in the program until such time as FNS, in consultation with the appropriate State agency, determines that the serious deficiency which resulted in the ineligible status has been corrected. Any institution which is identifiable with a seriously deficient institution through its corporate organization, officers, employees, or otherwise shall also be considered to be ineligible unless it is demonstrated to the satisfaction of the State agency, with FNS concurrence, that good cause exists for considering the institution distinct from the seriously deficient institution. Denial or termination actions taken on the basis of FNS notification of ineligible status shall not be subject to administrative review as provided in § 226.6(j). However, an institution which FNS has determined to be seriously deficient and which has not taken acceptable corrective action may request an administrative review of this determination by an FNS review official in accordance with the appeal procedures set forth in § 226.6(j) and will not be included on the list of ineligible institutions unless FNS' determination is upheld by the review official. Serious deficiencies, which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

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(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any advance payments which exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up payments;

(4) Failure to maintain adequate records;

(5) Failure to adjust meal orders to conform to variations in the number of participating children;

(6) The claiming of Program payments for meals not served to participating children;

(7) Service of a significant number of meals which did not include required quantities of all meal components;

(8) Continued use of food service management companies that are in violation of health codes;

(9) Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan;

(10) A history of administrative or financial mismanagement in any Federal child nutrition program;

(11) The claiming of Program payment for meals served by a proprietary Title XX center during a calendar month in which less than 25 percent of enrolled children were Title XX beneficiaries.

(d) *Licensing/approval.* This section prescribes State agency responsibilities to ensure that child care centers and day care homes meet the licensing/approval criteria set forth in this part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent centers shall submit such documentation to the State agency on their own behalf.

(1) *General.* Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, day care homes, and outside-school-hours care centers either:

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Child Care Food Program if their licenses lapse or are terminated; or

(ii) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) Receive Title XX funds for providing child care, if licensing or approval is not available; or

(iv) Demonstrate compliance with applicable State or local child care standards to the State agency, if licensing is not available and Title XX funds are not received; or

(v) Demonstrate compliance with CCFP child care standards to the State agency, if licensing or approval is not available and Title XX funds are not received.

(2) *CCFP child care standards.* (i) When licensing or approval is not available, independent child care centers, and sponsoring organizations on behalf of their child care centers or day care homes, may elect to demonstrate compliance, annually, with the following CCFP child care standards or other standards specified in paragraph (d)(3) of this section:

(A) *Staff/child ratios.* (*1*) Day care homes provide care for no more than 12 children at any one time. One home caregiver is responsible for no more than 6 children ages 3 and above, or no more than 5 children ages 0 and above. No more than 2 children under the age of 3 are in the care of 1 caregiver. The home provider's own children who are in care and under the age of 14 are counted in the maximum ratios of caregivers to children.

(*2*) Child care centers and outside-school-hours care centers do not fall below the following staff/child ratios:

(*i*) For children under 6 weeks of age—1:1

(*ii*) For children ages 6 weeks up to 3 years—1:4

(*iii*) For children ages 3 years up to 6 years—1:6

(*iv*) For children ages 6 years up to 10 years—1:15

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(*v*) For children ages 10 and above—1:20

(B) *Nondiscrimination.* Day care services are available without discrimination on the basis of race, color, national origin, sex, age, or handicap.

(C) *Safety and sanitation.* (*1*) A current health/sanitation permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(*2*) A current fire/building safety permit or satisfactory report of an inspection conducted by local authorities within the past 12 months shall be submitted.

(*3*) Fire drills are held in accordance with local fire/building safety requirements.

(D) *Suitability of facilities.* (*1*) Ventilation, temperature, and lighting are adequate for children's safety and comfort.

(*2*) Floors and walls are cleaned and maintained in a condition safe for children.

(*3*) Space and equipment, including rest arrangements for preschool age children, are adequate for the number of age range of participating children.

(E) *Social services.* Independent centers, and sponsoring organizations in coordination with their facilities, have procedures for referring families of children in care to appropriate local health and social service agencies.

(F) *Health services.* (*1*) Each child is observed daily for indications of difficulties in social adjustment, illness, neglect, and abuse, and appropriate action is initiated.

(*2*) A procedure is established to ensure prompt notification of the parent or guardian in the event of a child's illness or injury, and to ensure prompt medical treatment in case of emergency.

(*3*) Health records, including records of medical examinations and immunizations, are maintained for each enrolled child. (Not applicable to day care homes.)

(*4*) At least one full-time staff member is currently qualified in first aid, including artificial respiration techniques. (Not applicable to day care homes.)

(*5*) First aid supplies are available.

(*6*) Staff members undergo initial and periodic health assessments.

(G) *Staff training.* The institution provides for orientation and ongoing training in child care for all caregivers.

(H) *Parental involvement.* Parents are afforded the opportunity to observe their children in day care.

(I) *Self-evaluation.* The institution has established a procedure for periodic self-evaluation on the basis of CCFP child care standards.

(ii) When licensing or approval is not available, independent outside-school-hours care centers, and sponsoring organizations on behalf of their outside-school-hours care centers, may elect to demonstrate compliance with child care standards developed by the State agency which shall include, as a minimum, information on: (A) fire/safety, (B) sanitation, (C) organized activities, (D) kitchen and restroom facilities, (E) appropriateness of games and materials, (F) availability of emergency medical care, and (G) child-staff ratios as indicated in § 226.6(d)(2)(i)(A). For items (A) and (B), of this paragraph, appropriate State or local permits are required.

(3) *Alternate approval procedures.* Each State agency shall establish procedures to review information submitted by institutions for centers or homes for which licensing or approval is not available in order to establish eligibility for the Program. Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for child care centers, outside-school-hours care centers, or day care homes; or (ii) no mechanism exists to determine compliance with licensing/approval standards. In these situations, independent centers, and sponsoring organizations on behalf of their facilities, may choose to demonstrate compliance with either CCFP child care standards, applicable State child care standards, or applicable local child care standards. State agencies shall provide information about applicable State child care standards and CCFP child care standards to institutions, but may require institutions electing to demonstrate compliance with applicable local child care standards to identify and submit these

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standards. The State agency may permit independent centers, and sponsoring organizations on behalf of their facilities, to submit self-certification forms, and may grant approval without first conducting a compliance review at the center or facility. But the State agency shall require submission of health/sanitation and fire/safety permits or certificates for all independent centers and facilities seeking alternate child care standards approval. Compliance with applicable child care standards are subject to review in accordance with § 226.6(m).

(e) *Annual requirements.* State agencies shall require institutions to comply with applicable provisions of this part. Each State agency shall annually:

(1) Enter into and execute a written Program agreement with each institution, or renew such agreement with the written concurrence of the institution. The Program agreement shall provide that the institution shall accept final financial and administrative responsibility for management of an effective food service, comply with all requirements under this Part, and comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(2) Require each sponsoring organization to submit a management plan with its application for review and approval. Such a plan shall include detailed information on the organizational administrative structure, the staff assigned to Program management and monitoring, administrative budget, and procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction.

(3) Require each institution to submit an administrative budget. Each sponsoring organization shall be required to incorporate this budget into its management plan.

(4) Determine that all meal procurements with food service management companies are in conformance with the bid and contractual requirements of § 226.22.

(5) Inquire as to the preference of institutions for commodities or cash-in-lieu of commodities.

(6) Provide institutions with information on foods available in plentiful supply, based on information provided by the Department.

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced-price meals are served to children unable to pay the full price and provide to all institutions a copy of the Secretary's income standards to be used by institutions for determining the eligibility of enrolled children for free and reduced-price meals under the Program.

(8) Perform verification of the eligibility of enrolled children for free and reduced-price meals in participating institutions in accordance with the procedures outlined in § 226.23(h). State agencies verifying the information on free and reduced-price applications shall ensure that verification activities are applied without regard to race, color, national origin, sex, age, or handicap.

(f) *Program expansion.* Each State agency shall take action to expand the availability of benefits under this Program. As a minimum, the State shall annually notify each nonparticipating child care center, outside-school-hours care center, and day care home within the State that is licensed, approved, registered, or receiving funds under Title XX of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the Program. The State agency shall make the list of child care centers, outside-school-hours care centers, and day care

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homes notified each year available to the public upon request.

(g) *Commodity distribution.* The State shall annually inquire as to the preference of each institution for commodities or cash-in-lieu of commodities. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after consultation with the State commodity distribution agency, demonstrates to FNS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FNS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FNS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the State commodity distribution agency, unless FNS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served to children by each such institution.

(h) *Standard contract.* Each State agency shall develop a standard contract in accordance with § 226.21 and provide for its use between institutions and food service management companies. The contract shall expressly and without exception stipulate:

(1) The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;

(3) The food service management company shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;

(5) The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;

(6) The food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;

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(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;

(10) All meals served under the Program shall meet the requirements of § 226.20;

(11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with § 226.20.

(i) *Procurement provisions.* State agencies shall require institutions to adhere to the procurement provisions set forth in § 226.22.

(j) *Institution appeal procedures.* Each State agency shall establish an appeal procedure to be followed by an institution requesting a review of a denial of an institution's application for participation, a denial of an application submitted by a sponsoring organization on behalf of a facility, a termination of the participation of an institution or facility, a suspension of an institution's agreement, a denial of an institution's application for start-up payments, a denial of an advance payment, a denial of all or a part of the claim for reimbursement, (except for late submission under § 226.10(e)), a denial by the State agency to forward to FNS an exception request by the institution or sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim, demand for the remittance of an overpayment, and any other action of the State agency affecting the participation of an institution in the Program or the institution's claim for reimbursement. State agencies may use their own State appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the place, date and procedures of the hearing. The appeal procedures adopted by the State agency shall be made available in writing each year to all institutions at the time of application for participation in the Program and upon request. If the State has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The institution shall be advised in writing of the grounds on which the State agency based its action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the institution has the right to appeal the action;

(2) The written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the State shall acknowledge the receipt of the request for appeal within 10 calendar days;

(3) The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to

appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(4) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(5) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(6) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(7) The review offficial shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(8) Within 60 calendar days of the State agency's receipt of the request for review, the review official shall inform the State agency and the appellant of the determination of the review;

(9) The State agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of children. If the institution or facility has been terminated for this reason, the State agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State agency's action is upheld; and

(10) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(11) Appeals shall not be allowed on decisions made by FNS on requests for exceptions to the claims submission deadlines stated in § 226.10(e) or requests for upward adjustments to claims.

(12) In cases where an appeal results in the dismissal of a claim against an institution which was asserted by the State agency based upon Federal audit findings, FNS may assert a claim against the State agency in accordance with the procedures outlined in § 226.14(c).

(k) *Program assistance.* Each State agency shall provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with the Department's nondiscrimination regulations (Part 15 of this title) issued under Title VI of the Civil Rights Act of 1964. Documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts, shall be maintained on file by the State agency. Program reviews shall assess institutional compliance with the provisions of this part and with any applicable instructions of FNS and the Department. The State agency shall annually review 33.3 percent of all institutions, including reviews of 15 percent of the child care centers and outside-school-hours care centers under each sponsoring organization reviewed, and 10 percent of the first 1,000 day care homes and 5 percent of the homes in excess of 1,000 under each sponsoring organization reviewed. Such reviews shall be made for newly participating sponsoring organizations with five or more child care facilities within the first 90 days of Program operations. The State agency review system shall ensure that all institutions are reviewed at least once every four years.

(l) *Program irregularities.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any ir-

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regularities. State agencies shall maintain on file evidence of such investigations and actions. FNS and OIG may make investigations at the request of the State agency, or whenever FNS or OIG determines that investigations are appropriate.

(m) *Child care standards compliance.* The State agency shall, when conducting administrative reviews of child care centers, outside-school-hours care centers, and day care homes approved by the State agency under paragraph (d)(3) of this section, determine compliance with the child care standards used to establish eligibility, and the institution shall ensure that all violations are corrected and the State shall ensure that the institution has corrected all violations. If violations are not corrected within 60 calendar days of written notification to the institution, the State agency shall terminate the Program participation of the violating institution or facility. However, if the health or safety of the children is imminently threatened, the State agency may immediately terminate participation of the institution or facility. If, during an administrative review of a child care center, out side-school-hours care center, or day care home not approved by the State agency under paragraph (d)(3) of this section, the State agency observes violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed capacity, the State agency shall promptly refer such violations to the appropriate authority. The State agency may deny reimbursement for meals served to attending children in excess of authorized capacity.

(n) *Sponsoring organization agreement.* Each State agency shall develop and provide for the use of a standard form of agreement between each day care home sponsoring organization and all day care homes participating in the Program under such organization. However, the State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. State agencies may develop a similar form for use between sponsoring organizations and other types of facilities.

(Sec. 803, Pub. L. 97-35, 95 Stat. 524 (42 U.S.C. 1758); (42 U.S.C. 6101 *et seq.*))

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 49 FR 14078, Apr. 10, 1984; Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 8579, Mar. 4, 1985; 50 FR 19310, May 8, 1985; 50 FR 49343, Dec. 2, 1985]

§ 226.7 State agency responsibilities for financial management.

(a) This section prescribes standards of financial management systems in administering Program funds by the State agency and institutions.

(b) Each State agency shall maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies as delineated in the Uniform Federal Assistance Regulations, at 7 CFR Part 3015. State agencies or FNSRO's, where applicable, shall also have a system in place for monitoring and reviewing the institutions' documentation of their nonprofit status to ensure that all Program reimbursement funds are used: (1) Solely for the conduct of the food service operation; or (2) to improve such food service operations, principally for the benefit of the enrolled children.

(c) *Management evaluations and audits.* State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to institutions and facilities) of all operations of the State agency under the Program and shall provide OIG with full opportunity to conduct audits (including visits to institutions and facilities) of all operations of the State agency under the Program. Within 60 calendar days of receipt of each management evaluation report, the State agency shall submit to FNSRO a written plan for correcting serious deficiencies, including specific timeframes for accomplishing corrective actions and initiating follow-up efforts. If a State agency makes a showing of good cause, however, FNS may allow more than 60 days in which to submit a plan. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon request by FNS or OIG. OIG shall also have the right to make audits of the records and operation of any institution.

(d) *Reports.* Each State agency shall submit to FNS a final report of Child Care Food Program Operations (FNS-44) for each month which shall be limited to claims submitted in accordance with § 226.10(e) and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State agency's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Adjustments shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF-269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

(e) *Annual plan.* Each State shall submit to the Secretary for approval by August 15 of each year an annual plan for the use of State administrative expense funds, including a staff formula for State personnel.

(f) *Rate assignment.* Each State agency shall require institutions (other than sponsoring organizations for day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

(g) *Administrative budget approval.* The State agency shall approve institution administrative budgets, and shall limit allowable administrative costs claimed by each sponsoring organization for day care homes to administrative costs approved in its annual budget. The State agency may establish such administrative costs limits for other institutions. Administrative budget levels may be adjusted to reflect changes in Program activities.

(h) *Start-up payments.* Each State agency shall establish procedures for evaluating requests for start-up payments, issuing these payments to eligible sponsoring organizations, and monitoring the use of these payments.

(i) *Advance payments.* Each State agency shall establish procedures for issuing advance payments by the first day of each month and comparing these payments with earned reimbursement on a monthly basis. The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advance funds by sponsors, institutions and child care facilities.

(j) *Recovery of overpayments.* Each State agency shall establish procedures to recover outstanding start-up and advance payments from institutions which, in the opinion of the State agency, will not be able to earn these payments.

(k) *Claims processing.* Each State agency shall establish procedures for institutions to properly submit claims for reimbursement. All valid claims shall be paid within 45 calendar days of receipt. Within 15 calendar days of receipt of any incomplete or incorrect claim which must be revised for payment, the State agency shall notify the institution as to why and how such claim must be revised. If the State agency disallows partial or full payment for a claim for reimbursement, it shall notify the institution which submitted the claim of its right to appeal under § 226.6(j). State agencies may permit disallowances to be appealed separately from claims for reimbursement.

(l) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to children attending in excess of the authorized capacity of each independent center or child care facility.

(m) *Financial management system.* Each State agency shall establish a financial management system in accordance with the Uniform Federal Assistance Regulations, 7 CFR Part 3015, and FNS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. These standards shall (1) prohibit claiming reimbursement for meals provided by a child's parents, except as authorized by § 226.18(e) and (2) allow the cost of meals served to adults who perform necessary food service labor under the Program, except in day care homes. The State agency shall provide guidance on financial management requirements to each institution.

(Secs. 13, 17, National School Lunch Act, as amended by Pub. L. 97-307; secs. 810, 819, 820, Pub. L. 97-35; the Omnibus Budget Reconciliation Act of 1981; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1979))

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985]

§ 226.8 Audits.

(a) The State agency shall provide for audits at the State and institution levels of Program funds, payments and operations. Such audits shall be conducted at least once every 2 years for each institution. Organization-wide audits of institutions receiving other Federal funds may be counted toward meeting this requirement. The audits shall determine the fiscal integrity of financial transactions and reports, and compliance with applicable laws and regulations. Audits may be made by:

(1) State agency internal auditors;

(2) State Auditors General;

(3) State Comptrollers Office;

(4) Other comparable State or local groups;

(5) Certified public accountants;

(6) Public accountants licensed on or before December 31, 1970, currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(b) Except with the written approval of FNSRO, State agencies shall not permit institutions either to select an auditing firm or to disburse funds provided to the State agency for the conduct of audit under § 228.4(h).

(c) In conducting audits during any fiscal year, the State agency shall establish priorities for using the funds provided for in § 226.4(h) first to meet the fiscal audit requirements outlined in this section. Costs pertaining to such audits shall not be borne in whole or in part by the institution. Such audits shall be fiscal audits conducted in accordance with the Department's guidelines. After fulfilling the audit requirements any remaining funds may be used by the State agency, during the fiscal year for which the funds are allocated, to conduct administrative reviews of program operations in institutions. If the funds provided under § 226.4(h) are not sufficient to meet the requirements of this section, the State agency may use available State administrative expense funds to conduct audits.

(d) Use of audit guides available from OIG is encouraged. When these guides are utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) In conducting management evaluations or audits for any fiscal year, FNS or OIG may disregard any overpayment which does not exceed $100. In conducting State agency sponsored audits in State administered programs, the State agency may disregard any overpayment which does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is evidence of violation of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary:

(1) Make audits on a statewide basis;

(2) Perform on-site test audits;

(3) Review audit reports and related working papers of audits performed by or for State agencies.

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[47 FR 36527, Aug. 20, 1982, as amended at 50 FR 8580, Mar. 4, 1985]

Subpart D—Payment Provisions

§ 226.9 Assignment of rates of reimbursement for centers.

(a) The State agency shall assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted annually to reflect changes in the national average payment rates.

(b) The State agency shall either:

(1) Require that institutions submit each month figures for meals served daily to children from families meeting the family-size and income standards for free meals, to children from families meeting the family-size and income standards for reduced-price meals, and to children from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently that annually, for each institution on the basis of the number of enrolled children eligible for free, reduced-price, and paid meals; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(c) States have two methods of reimbursing institutions. The method chosen by the State agency must be applied to all institutions participating in the CCFP in that State. These methods are:

(1) Meals times rates payment, which involves reimbursing an institution for meals served at the assigned rate for each meal. This method entails no comparison to the costs incurred by the institution for the meal service; and,

(2) Meals times rates or actual costs, whichever is the lesser, which involves reimbursing an institution for meals served at the assigned rate for each meal or at the level of the costs actually incurred by the institution for the meal service. This method does entail a comparison of the costs incurred to the meal rates, with the costs being a limiting factor on the level of reimbursement an institution may receive.

(d) In those States where the State agency has chosen the option to implement a meals times rates payment system State-wide, the State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates of reimbursement established under § 210.11(b) of the National School Lunch Program regulations. In those States which use the method of comparing meals times rates or actual costs, whichever is lesser, the total payments made to an institution shall not exceed the total net costs incurred for the fiscal year.

(Secs. 810, 819 and 820, Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981; sec. 2, Pub. L. 95-627, Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1979))

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983]

§ 226.10 Program payment procedures.

(a) By the first day of each month of operation, the State agency shall provide an advance payment to each institution electing to receive such payments, in accordance with § 226.6(b)(10). Advance payments shall equal the full level of claims estimated by the State agency to be submitted in accordance with paragraph (c) of this section, considering prior reimbursement claims and other information such as fluctuations in enrollment. The institution may decline to receive all or any part of the advance.

(b) For each fiscal year, the amount of payment made, including funds advanced to an institution, shall not exceed the amount of valid reimbursement claimed by that institution. To ensure that institutions do not receive excessive advance payments, the State agency shall observe the following procedures:

(1) After three advance payments have been made to an institution, the State agency shall ensure that no subsequent advance is made until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the next advance is to be paid.

(2) If the State agency has audit or monitoring evidence of extensive program deficiencies or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments shall be withheld until the claim is received or the deficiencies are corrected.

(3) Each month the State agency shall compare incoming claims against advances to ensure that the level of funds authorized under paragraph (a) of this section does not exceed the claims for reimbursement received from the institution. Whenever this process indicates that excessive advances have been authorized, the State agency shall either demand full repayment or adjust subsequent payments, including advances.

(4) If, as a result of year end reconciliation as required by the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), the State agency determines that reimbursement earned by an institution during a fiscal year is less than the amount paid, including funds advanced to that institution, the State agency shall demand repayment of the outstanding balance or adjust subsequent payments.

(c) Claims for Reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Child Care Food Program Operations required under § 226.7(d). In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. Independent proprietary Title XX centers, for months in which not less than 25 percent of enrolled children were Title XX beneficiaries, shall submit the percentages of enrolled children receiving Title XX benefits for the month covered by the claim month. Sponsoring organizations of such centers shall submit the percentage of enrolled children receiving Title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not include in any claim those centers in which less than 25 percent of enrolled children were Title XX beneficiaries for the month claimed.

(d) All records to support the claim shall be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three year period as long as may be required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(e) Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall cover only Program operations for that month except if the first or last month of Program operations in any fiscal year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjust-

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ments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of Child Care Food Program Operations (FNS-44) for the claim month which is required under 226.7(d). Upward adjustments in Program funds claimed which are not reflected in the final FNS-44 for the claim month shall not be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization regardless of when it is determined that such adjustments are necessary.

(f) If a State agency has reason to believe that an institution or food service management company has engaged in unlawful acts with respect to Program Operations, evidence found in audits, investigations or other reviews shall be a basis for non-payment of claims for reimbursement.

(Secs. 13 and 17, National School Lunch Act, as amended by Pub. L. 97-307)

[47 FR 36527, Aug. 20, 1982, as amended by Amdt. 5, 49 FR 18988, May 4, 1984; 50 FR 26975, July 1, 1985]

§ 226.11 Program payments for child care centers and outside-school-hours care centers.

(a) Payments shall be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers and outside-school-hours care centers. A State agency may make payment for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.

(b) Each institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children, except that such reports shall be made for a proprietary Title XX center only for calendar months during which not less than 25 percent of enrolled children were Title XX beneficiaries.

(c) Each State agency shall base reimbursement to each institution on the number of meals, by type, served to children multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary Title XX centers only for calendar months during which not less than 25 percent of enrolled children were Title XX beneficiaries. In computing reimbursement, the State agency shall either:

(1) Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to children from families meeting the family-size and income standards for free meals, served to children from families meeting the family-size and income standards for reduced-price meals, and served to children from families not meeting such standards by the applicable national average payment rate, or (2) apply the applicable claiming percentage or percentages to the total number of meals, by type, served to children and multiply the product or products by the assigned rate of reimbursement for each meal type, or (3) multiply the assigned blended per-meal rate of reimbursement by the total number of meals, by type, served to children.

(d) If the State agency elects to reimburse its institutions according to the lesser of rates or actual costs, total Program payments to an institution during any fiscal year, including any cash payments in lieu of commodities, shall not exceed allowable Program operating and administrative costs, less income to the Program. The State agency may limit payments for administrative costs to the amount approved in the annual administrative budget of the institution. The State agency may prohibit an institution from using payments for operating costs to pay for administrative expenses.

(e) Each institution shall maintain records as prescribed by the State agency's financial management system.

(Secs. 810, 819 and 820, Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1979))

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983]

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§ 226.12 Administrative payments to sponsoring organizations for day care homes.

(a) Sponsoring organizations for day care homes shall receive payments for administrative costs. During any fiscal year, administrative costs payments to a sponsoring organization may not exceed the lesser of (1) actual expenditures for the costs of administering the Program less income to the Program, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's:

(i) Initial 50 day care homes by 42 dollars;

(ii) Next 150 day care homes by 32 dollars;

(iii) Next 800 day care homes by 25 dollars; and

(iv) Additional day care homes by 22 dollars.

During any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

(b) Prospective sponsoring organizations of day care homes, participating sponsoring organizations of child care centers or outside-school-hours care centers, independent centers, and participating sponsoring organizations of fewer than 50 homes which meet the criteria of this paragraph shall be entitled to receive start-up payments to develop or expand successful Program operations in day care homes. The State agency shall approve start-up payments only once for any eligible sponsoring organization. Sponsoring organizations which apply for start-up payments shall evidence:

(1) Public or nonprofit status in accordance with § 226.15(a), except that sponsoring organizations which are moving toward compliance with the requirements for IRS tax-exempt status must demonstrate current tax-exempt status under the State law and regulations; (2) an organizational history of managing funds and ongoing activities (i.e. administering public or private programs); (3) an acceptable and realistic plan for recruiting day care homes to participate in the Program which may be based on estimates of the number of day care homes to be recruited and information supporting their existence (e.g., the method of contacting providers); and (4) acceptable preliminary sponsoring organization management plan (e.g., plans for preoperational visits, training).

The State agency shall deny start-up payments to applicant sponsoring organizations which fail to meet any of these criteria or which have demonstrated financial irresponsibility in the operation of other programs funded by Federal, State, or local governments. The State agency shall notify the sponsoring organization of the reasons for denial and allow the sponsoring organization full opportunity to submit evidence on appeal as provided for in § 226.6(j). Any sponsoring organization applying for start-up funds shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If a sponsoring organization submits an incomplete application, the State agency shall notify the sponsoring organization within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the sponsoring organization for the purpose of completing its application.

(c) Applicant sponsoring organizations which apply for and meet the criteria for start-up payments shall enter into an agreement with the State agency. The agreement shall specify:

(1) Activities which the sponsoring organization will undertake to initiate or expand Program operations in day care homes;

(2) The amount of start-up payments to be issued to the sponsoring organization, together with a budget detailing the costs which the sponsoring organization shall incur, document, and claim;

(3) The time allotted to the sponsoring organization for the initiation or expansion of Program operations in family day care homes;

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(4) The responsibility of the applicant sponsoring organization to repay, upon demand by the State agency, start-up payments not expended in accordance with the agreement.

(d) Upon execution of the agreement, the State agency shall issue a start-up payment to the sponsoring organization in an amount equal to not less than one, but not more than two, month's anticipated administrative reimbursement to the sponsoring organization as determined by the State agency. However, no sponsoring organization may receive start-up payments for more than 50 day care homes, and eligible sponsoring organizations with fewer than 50 homes under their jurisdiction at the time of application for start-up funds shall receive such payments for up to 50 homes, less the number of homes under their jurisdiction. In determining the amount of start-up payments to be made to a sponsoring organization, the State agency shall consider the anticipated level of start-up costs to be incurred by the sponsoring organization and alternate sources of funds available to the sponsoring organization.

(e) Upon expiration of the time allotted to the sponsoring organization for initiating or expanding Program operations in day care homes, the State agency shall obtain and review documentation of activities performed and costs incurred by the sponsoring organization under the terms of the start-up agreement. If the sponsoring organization has not made every reasonable effort to carry out the activities specified in the agreement, the State agency shall demand repayment of all or part of the payment; however, the sponsoring organization may retain start-up payment for all day care homes which initiate Program operations. No sponsoring organization may retain any start-up payments in excess of its actual costs for the expenditures specified in the agreement.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982]

§ 226.13 Food service payments to sponsoring organizations for day care homes.

(a) Payments shall be made only to sponsoring organizations operating under an agreement with the State agency for the meal types specified in the agreement served to enrolled nonresident children and eligible enrolled children of day care home providers, at approved day care homes.

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children enrolled in approved day care homes.

(c) Each sponsoring organization shall receive payment for meals served to children enrolled in approved day care homes at the rate of 47.75 cents for each breakfast, 93.5 cents for each lunch and supper, and 28 cents for each supplement. However, the rate for the lunches and suppers shall be reduced by the value of commodities established under § 226.5(b) for all sponsoring organizations for day care homes which have elected to receive commodities. The full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals, by type, served to children. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization in behalf of the home and with the home provider's written consent.

§ 226.14 Claims against institutions.

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.6(j). Miminum State agency collection procedures for unearned payments shall include:

(1) Written demand to the institution for the return of improper pay-

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ments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of § 226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect. However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

(c) If FNS does not concur with the State agency's action in paying an institution or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment, unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 50 FR 8580, Mar. 4, 1985]

Subpart E—Operational Provisions

§ 226.15 Institution provisions.

(a) *Tax-exempt status.* Except for proprietary Title XX centers, and sponsoring organizations of such centers, institutions shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An institution which has applied to IRS for tax-exempt status may participate in the program while its application is pending review by IRS. It shall, however, be the responsibility of the institution to document that it has complied with all requirements of IRS and has provided all information requested. If IRS denies the application for tax-exempt status, the institution shall immediately notify the State agency of such denial. The State agency shall then terminate the participation of the institution. If IRS certification of tax-exempt status has not been received within 12 months of filing the application with IRS, and IRS indicates that the institution has failed to provide all required information, the State agency shall terminate the participation of the institution until such time as IRS tax-exempt status is obtained.

(b) *Applications.* Each institution shall submit to the State agency all information required for its approval. As a minimum, such information shall include:

(1) Except for proprietary Title XX centers and sponsoring organizations of proprietary Title XX centers, evidence of nonprofit status, in accordance with § 226.15(a);

(2) An application for participation, or application renewal materials, accompanied by all necessary supporting documentation;

(3) An administrative budget;

(4) If an independent child care center or independent outside-school-hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1);

(5) A nondiscrimination and free and reduced-price policy statement, and information regarding a public release, in accordance with § 226.23; and

(6) For each proprietary Title XX center, documentation that it provides nonresidential day care services for which it receives compensation under Title XX of the Social Security Act and certification that not less than 25 percent of the children enrolled during the most recent calendar month were Title XX beneficiaries.

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Sponsoring organizations shall provide documentation and certification for each proprietary Title XX center under their jurisdiction.

(c) *Responsibility.* Each institution shall accept final administrative and financial responsibility for Program operations. No institution may contract out for management of the Program.

(d) *Staffing.* Each institution shall provide adequate supervisory and operational personnel for management and monitoring of the Program.

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all necessary Program records. Such records shall include:

(1) Copies of all applications and supporting documents submitted to the State agency;

(2) Documentation of the enrollment of each child, including family-size and income information used to determine eligibility for free or reduced-price meals for each child reported as being in either need category, at child care centers and outside-school-hours care centers. Such information shall include the social security number of each adult member of the household.

(3) Documentation of the enrollment of each child at day care homes and the family size and income information used to determine the eligibility of enrolled providers' children for free or reduced-price meals. Such information shall include the social security number of each adult member of the household of which the provider's child is a member.

(4) Daily records indicating the number of children in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to enrolled children;

(5) Except at day care homes, daily records indicating the number of meals, by type, served to adults performing labor necessary to the food service;

(6) Copies of invoices, receipts, or other records required by the State agency financial management instruction to document:

(i) Administrative costs claimed by the institution;

(ii) Operating costs claimed by the institution except sponsoring organizations of day care homes; and

(iii) Income to the Program.

(7) Copies of all claims for reimbursement submitted to the State agency;

(8) Receipts for all Program payments received from the State agency;

(9) Copies of menus, and any other food service records required by the State agency; and

(10) Information on training session date(s) and location(s), as well as topics presented and names of participants;

(11) Maintain documentation of nonprofit food service to ensure that all Program reimbursement funds are used: (i) Solely for the conduct of the food service operation; or (ii) to improve such food service operations, principally for the benefit of the enrolled children.

(f) *Claims submission.* Each institution shall submit claims for reimbursement to the State agency in accordance with § 226.10.

(g) *Program agreement.* Each institution shall enter into a Program agreement with the State agency in accordance with § 226.6(e)(1).

(h) *Commodities.* Each institution receiving commodities shall ensure proper commodity utilization.

(i) *Special Milk Program.* No institution may participate in both the Child Care Food Program and the Special Milk Program at the same time.

(Secs. 810, 819 and 820, Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981; sec. 2, Pub. L. 95-627, Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1979))

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985]

§ 226.16 Sponsoring organization provisions.

(a) Each sponsoring organization shall comply with all provisions of § 226.15.

(b) Each sponsoring organization shall submit to the State agency all information required for its approval and the approval of all child care facilities under its jurisdiction, including:

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(1) A sponsoring organization management plan, in accordance with § 226.6(e)(2);

(2) An application for participation, or renewal materials, for each child care facility accompanied by all necessary supporting documentation; and

(3) Timely information concerning the eligibility status of child care facilities (such as licensing/approval actions).

(c) Each sponsoring organization shall accept final administrative and financial responsibility for food service operations in all child care facilities under its jurisdiction.

(d) Each sponsoring organization shall provide adequate supervisory and operational personnel for the effective management and monitoring of the program at all child care facilities under its jursidiction. At a minimum, such Program assistance shall include:

(1) Pre-approval visits to each child care facility for which application is made to discuss Program benefits and verify that the proposed food service does not exceed the capability of the child care facility;

(2) Staff training for all child care facilities in Program duties and responsibilities prior to beginning Program operations;

(3) Additional training sessions, to be provided not less frequently than annually; and

(4) Reviews of food service operations to assess compliance with meal pattern, recordkeeping, and other Program requirements. Such reviews shall be made not less frequently than:

(i) Three times each year at each child care center, provided at least one review is made during each child care center's first six weeks of Program operations and not more than six months elapse between reviews;

(ii) Three times each year at each day care home, provided at least one review is made during each day care home's first four weeks of Program operations and not more than six months elapse between reviews. However, based on case-by-case findings by the State agency that improved efficiency and more effective management will result and subject to FNSRO approval, State agencies may allow some or all of their sponsors to conduct reviews an average of three times each year per day care home, provided that each day care home is reviewed at least twice each year, at least one review is made during each day care home's first four weeks of Program operations, and no more than six months elapse between reviews; and

(iii) Six times each year for each outside-school-hours care center, provided at least one review is made during each outside-school-hours care center's first four weeks of Program operations and not more than three months elapse between reviews.

(e) In addition to records required under § 226.15(e), each sponsoring organization shall maintain the following:

(1) Information concerning the dates and amounts of disbursements to each child care facility;

(2) Information concerning the location and dates of each child care facility review, any problems noted, and the corrective action prescribed and effected.

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of child care facilities (child care centers, day care homes, and outside-school-hours care centers).

(g) Each sponsoring organization electing to receive advance payments of program funds for day care homes shall disburse the full amount of such payments within five working days of receipt from the State agency. If the sponsor requests the full operating advance to which it is entitled, the advances to day care homes shall be the full amount which the sponsor expects the home to earn based on the number of meals projected to be served to enrolled children during the period covered by the advance multiplied by the applicable payment rate as specified in § 226.13(c). If a sponsor elects to receive only a part of the operating advance to which it is entitled, or if the full operating advance is insufficient to provide a full advance to each home, the advance shall be disbursed to its homes in a manner and an amount the sponsor deems appropriate. Each sponsor shall disburse any

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reimbursement payments for food service due to each day care home within five working days of receipt from the State agency. Such payment shall be based on the number of meals served to enrolled children at each day care home, less any payments advanced to such home. However, the sponsoring organization may withhold from Program payments to each home an amount equal to food service operating costs incurred by the sponsoring organization in behalf of the home and with the home provider's written consent. If payments from the State agency are not sufficient to provide all day care homes under the sponsoring organization's jurisdiction with advance payments and reimbursement payments, available monies shall be used to provide all due reimbursement payments before advances are disbursed.

(h) Sponsoring organizations shall make payments of program funds to child care centers or outside-school-hours care centers within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements may not exceed the rates times the number of meals documented at each facility during any fiscal year.

(i) Disbursements of advance payments may be withheld from child care facilities which fail to submit reports required by § 226.15(e).

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary Title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary Title XX centers which are legally distinct from the organization, day care homes, or public or private nonprofit centers.

(Secs. 810, 819 and 820, Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981; sec. 2, Pub. L. 95-627, Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1979))

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985]

§ 226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements:

(1) Child care centers shall have Federal, State, or local licensing or approval to provide day care services to children. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

(i) It receives Title XX funds for child care; or

(ii) It demonstrates compliance with the CCFP Child Care Standards or any applicable State or local child care standards to the State Agency.

(2) Except for proprietary Title XX centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. A child care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the child care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the child care center. If

IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the child care center has failed to provide all required information, the State agency shall terminate the participation of the child care center until such time as IRS tax-exempt status is obtained.

(3) Each child care center participating in the Program shall serve one or more of the following meal types: (i) Breakfast, (ii) lunch, (iii) supper, and (iv) supplemental food. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served to children at any one time in excess of the child care center's authorized capacity, or for any meal served at a proprietary Title XX center during a calendar month when less than 25 percent of enrolled children were Title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, supplement, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch Program provided the limit of not more than two meals and one supplement per child per day is not exceeded. If the majority of children served by the center are participating in an outside-school-hours care program, the center shall comply with reporting requirements of § 226.19 and, if it is a facility, shall be monitored by the sponsoring organization at the frequency specified in § 226.16(d)(4)(iii).

(6) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(7) Child care centers shall collect and maintain current family-size and income information and the social security number of adult household members for children classified as eligible for free and reduced-price meals, and documentation of the enrollment of children not eligible for free or reduced-price meals.

(8) Each child care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled children, and to adults performing labor necessary to the food service.

§ 226.18 Day care home provisions.

(a) Day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a day care home may participate in the Program if:

(1) It receives Title XX funds for providing child care; or

(2) It demonstrates compliance with CCFP child care standards or applicable State or local child care standards to the State agency.

(b) Day care homes participating in the program shall operate under the auspices of a public or private nonprofit sponsoring organization. Sponsoring organizations shall enter into a written agreement with each sponsored day care home which specifies the rights and responsibilities of both parties. This agreement shall be developed by the State agency, unless the State agency elects, at the request of the sponsor, to approve an agreement

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developed by the sponsor. At a minimum, the agreement shall embody:

(1) The right of the sponsoring organization, the State agency, and the Department to visit the day care home and review its meal service and records during its hours of child care operations;

(2) The responsibility of the sponsoring organization to train the day care home's staff in program requirements;

(3) The responsibility of the day care home to prepare and serve meals which meet the meal patterns specified in § 226.20;

(4) The responsibility of the day care home to maintain records of menus, and of the number of meals, by type, served to enrolled children;

(5) The responsibility of the day care home to promptly inform the sponsoring organization about any change in the number of children enrolled for care or in its licensing or approval status;

(6) The meal types approved for reimbursement to the day care home by the State agency;

(7) The right of the day care home to receive in a timely manner the full food service rate for each meal served to enrolled children for which the sponsoring organization has received payment from the State agency. However, if, with the home provider's consent, the sponsoring organization will incur costs for the provision of program foodstuffs or meals in behalf of the home, and subtract such costs from Program payments to the home, the particulars of this arrangement shall be specified in the agreement;

(8) The right of the sponsoring organization or the day care home to terminate the agreement for cause or, subject to stipulations by the State agency, convenience; and

(9) A prohibition of any sponsoring organization fee to the day care home for its Program administrative services.

(10) If the State agency has approved a time limit for submission of meal records by day care homes, that time limit shall be stated in the agreement.

(c) Each day care home shall serve one or more of the following meal types:

(1) Breakfast,

(2) Lunch,

(3) Supper and

(4) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child.

(d) Each day care home participating in the program shall serve the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Menu records shall be maintained to document compliance with these requirements. Meals shall be served at no separate charge to enrolled children;

(e) Each day care home shall maintain daily records of the number of children in attendance and the number of meals, by type, served to enrolled children. Payment may be made for meals served to the provider's own children only when (1) such children are enrolled and participating in the child care program during the time of the meal service, (2) enrolled nonresident children are present and participating in the child care program and (3) providers' children meet the family-size income standards for free or reduced-price meals. Reimbursement may not be claimed for meals served to children who are not enrolled, or for meals served at any one time to children in excess of the home's authorized capacity or for meals served to providers' children who are not eligible for free or reduced-price meals.

(f) The State agency may not require a day care home or sponsoring organization to maintain documentation of home operating costs. The State agency may not require a sponsoring organization to provide family size and income data on children enrolled in homes under its jurisdiction except in the case of providers' own children for the purpose of determining the eligibility of such children for program participation.

[47 FR 36527, Aug. 20, 1982, as amended by Amdt. 5, 49 FR 18989, May 4, 1984; 50 FR 8580, Mar. 4, 1985]

§ 226.19 Outside-school-hours care center provisions

(a) Outside-school-hours care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; *Provided, however,* That public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Outside-school-hours care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All outside-school-hours care centers, independent or sponsored, shall meet the following requirements:

(1) Outside-school-hours care centers shall have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours. The main purpose of the Program shall be the care and supervision of children. Outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates the renewal will be denied. If licensing or approval is not available, an outside-school-hours care center may participate in the Program if:

(i) It receives Title XX funds for providing child care; or

(ii) It demonstrates compliance with CCFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for proprietary Title XX centers, outside-school-hours care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently participating in another Federal program requiring nonprofit status. Centers which have applied to IRS for tax-exempt status may participate in the Program while their application is pending review by IRS. If IRS denies the application, the center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS and IRS indicates that the center has failed to provide all required information, the State agency shall terminate the participation of the center in the Program until such time as IRS certification is obtained.

(3) Nonresidential public or private nonprofit schools which provide organized child care programs for school children may participate in the Program as outside-school-hours care centers if:

(i) Children are enrolled in a regularly scheduled child care program which meets the criteria of paragraph (b)(1) of this section. The program is organized for the purpose of providing child care services and is distinct from any extracurricular programs organized primarily for scholastic, cultural, and athletic purposes; and

(ii) Separate Program records are maintained.

(4) Outside-school-hours care centers shall be eligible to serve a breakfast, supplement, and supper to enrolled children outside of school hours.

(5) The State agency may authorize the service of lunch on weekdays to enrolled children attending schools which do not offer a lunch program provided the limit of not more than two meals and one supplement per child per day is not exceeded. Lunch may be served to all enrolled children during periods of school vacation, including weekends and holidays, provided that no more than two meals and one supplement is served per child per day. However, outside-school-hours care centers may not operate under the Program on weekends only.

(6) Each outside-school-hours care center participating in the Program shall claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each child. In addition, reimbursement shall not be claimed for meals served to children who are not enrolled, for meals served to children at any one time in excess

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of authorized capacity, or for any meal served at a proprietary Title XX center during a calendar month when less than 25 percent of enrolled children were Title XX beneficiaries.

(7) Three hours shall elapse between the beginning of one meal service and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of a supper shall begin no later than 7 p.m. and end no later than 8 p.m. The duration of the meal service shall be limited to 2 hours for lunches and supper and 1 hour for other meals.

(8) Each outside-school-hours care center shall ensure that each meal service is supervised by an adequate number of operational personnel trained in Program requirements. Operational personnel shall ensure that:

(i) Meals are served only to children enrolled for care and adults who perform necessary food service labor; (ii) meals served to children meet the meal pattern requirements specified in § 226.20; (iii) each meal service is consistent with the meal time requirements of paragraph (b)(7) of this section; (iv) meals served are consumed on the premises of the centers; (v) accurate records are maintained; and (vi) the number of meals prepared or ordered is promptly adjusted on the basis of participation trends.

(9) Each outside-school-hours care center shall accurately maintain the following records:

(i) Documentation of enrollment for all children, including current family-size and income information for children classified as eligible for free and reduced-price meals;

(ii) Number of meals prepared or delivered for each meal service;

(iii) Daily menu records for each meal service;

(iv) Number of meals served to enrolled children at each meal service;

(v) Number of enrolled children in attendance during each meal service;

(vi) Number of meals served to adults performing necessary food service labor for each meal service; and

(vii) All other records required by the State agency financial management system.

(10) An outside-school-hours care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the outside-school-hours care center and the school. The center shall maintain responsibility for all Program requirements set forth in this part.

§ 226.20 Requirements for meals.

(a) Except as otherwise provided in this section, each meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain: (i) A serving of fluid milk as a beverage or on cereal, or used in part for each purpose;

(ii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods;

(iii) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of whole-grain or enriched or fortified cereal; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(2) Both lunch and supper shall contain: (i) A serving of fluid milk as a beverage;

(ii) A serving of lean meat, poultry or fish; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or an equivalent quantity of any combination of these foods. These foods must be served in a main dish, or in a main dish and one other menu item, to meet this requirement. Cooked dry beans or dry peas may be used as the meat alternate or as part of the vegetable/fruit component but not as both food components in the same meal;

(iii) A serving of two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Supplemental food shall contain two of the following four components:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgar, or corn grits; or an equivalent quantity of any combination of these foods.

(b) *Infant meal pattern.* When infants aged up to 1 year participate in the Program, an infant meal shall be offered. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served. The total amount of food authorized in the meal patterns set forth below must be provided to the infant in order to qualify for reimbursement but may be served during a span of time consistant with the infant's eating habits. Solid food should be introduced to children age 4 months and older on a gradual basis with the intent of ensuring their nutritional well-being. The infant meal shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) *Age 0 up to 4 months:* (i) Breakfast—4-6 fluid ounces of infant formula;

(ii) Lunch or supper—4-6 fluid ounces of infant formula;

(iii) Supplemental food—4-6 fluid ounces of infant formula.

(2) *4 to 8 months:* (i) Breakfast—6-8 fluid ounces of infant formula; 1-3 tablespoons of infant cereal;

(ii) Lunch or supper—6-8 fluid ounces of infant formula; 1-2 tablespoons of infant cereal; 1-2 tablespoons of fruit or vegetable of appropriate consistency or a combination of both; 0-1 tablespoon of meat, fish, poultry, or egg yolk or 0-½ ounce (weight) of cheese or 0-1 ounce (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency;

(iii) Supplemental food—2-4 fluid ounces of infant formula or full-strength fruit juice; 0-¼ slice of crusty bread or 0-2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(3) *8 months up to 1 year:* (i) Breakfast—6-8 fluid ounces of infant formula, or 6-8 fluid ounces of whole fluid milk and 0-3 fluid ounces of full-strength fruit juice; 2-4 tablespoons infant cereal;

(ii) Lunch or supper—6-8 fluid ounces of infant formula, or 6-8 fluid ounces whole fluid milk and 0-3 fluid ounces of full-strength fruit juice; 3-4 tablespoons of fruit or vegetable of appropriate consistency or infant cereal or combinations of such foods; 1-4 tablespoons of meat, fish, poultry, or egg yolk or ½-2 ounces (weight) of cheese or 1-4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency; and

(iii) Supplementary food—2-4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0-¼ slice of crusty bread or 0-2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(c) *Meal patterns for children age one through 12.* When children over age one participate in the Program,

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the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

BREAKFAST

(1) The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]
Milk			
Milk, fluid	½ cup [2]	¾ cup	1 cup.
Vegetables and Fruits			
Vegetable(s) and/or fruit(s)	¼ cup	½ cup	½ cup.
or			
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	¼ cup	½ cup	½ cup.
Bread and Bread Alternates [3]			
Bread	½ slice	½ slice	1 slice.
or			
Cornbread, biscuits, rolls, muffins, etc.[4]	½ serving.	½ serving	1 serving
or			
Cold dry cereal [5]	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup or 1 oz.
or			
Cooked cereal	¼ cup	¼ cup	½ cup.
or			
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup.
or			
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup.

[1] Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls., but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Bread, pasta or noodle products, and cereal grains, shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain or enriched or fortified.

[4] Serving sizes and equivalents to be published in guidance materials by FNS.

[5] Either volume (cup) or weight (oz), whichever is less.

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LUNCH OR SUPPER

(2) The minimum amounts of food components to be served as lunch or supper as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12[1]
Milk			
Milk, fluid	½ cup[2]	¾ cup	1 cup.
Vegetables and Fruits[3]			
Vegetable(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total.
Bread and Bread Alternates[4]			
Bread	½ slice	½ slice	1 slice.
or			
Cornbread, biscuits, rolls, muffins, etc.[5]	½ serving	½ serving	1 serving.
or			
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup.
or			
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup.
Meat and Meat Alternates			
Lean meat or poultry or fish[6]	1 oz	1½ oz	2 oz.
or			
Cheese	1 oz	1½ oz	2 oz.
or			
Eggs	1 egg	1 egg	1 egg.
or			
Cooked dry beans or peas	⅛ cup	⅜ cup	½ cup.
or			
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 tbsp	3 tbsp	4 tbsp.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit or fruit juice may be counted to meet not more than one-half of this requirement.

[4] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour.

[5] Serving sizes and equivalents to be published in guidance materials by FNS.

[6] Edible portion as served.

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SUPPLEMENTAL FOOD

(3) The minimum amounts of food components to be served as supplemental food as set forth in paragraph (a)(3) of this section are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food Components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12[1]
Milk			
Milk, fluid	½ cup[2]	½ cup	1 cup.
Vegetables and Fruits			
Vegetable(s) and/or fruit(s)	½ cup	½ cup	¾ cup.
or			
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup	½ cup	¾ cup.
Bread and Bread Alternate[3]			
Bread	½ slice	½ slice	1 slice.
or			
Cornbread, biscuits, rolls, muffins, etc.[4]	½ serving	½ serving	1 serving.
or			
Cold dry cereal[5]	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup or 1 oz.
or			
Cooked cereal	¼ cup	¼ cup	½ cup.
or			
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup.
or			
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup.
Meat and Meat Alternates			
Lean meat or poultry or fish[6]	½ oz.	½ oz.	1 oz.
or			
Cheese	½ oz.	½ oz.	1 oz.
or			
Eggs	½ egg	½ egg	1 egg.
or			
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup.
or			
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	1 tbsp	1 tbsp	2 tbsp.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the mimimum quantities specified in this section for children age 6 up to 12.

[2] For purposes of the requirements outlined in this paragraph, a cup means a standard measuring cup.

[3] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.

[4] Serving size and equivalents to be published in guidance materials by FNS.

[5] Either volume (cup) or weight (oz), whichever is less.

[6] Edible portion as served.

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(d) *Additional food.* To improve the nutrition of participating children over 1 year of age additional foods may be served with each meal as follows:

(1) *Breakfast.* Include as often as practical an egg; or a 1-ounce serving (edible portion as served) of meat, poultry or fish; or 1-ounce of cheese; or 2 tablespoons of peanut butter or an equivalent quantity of any combination of these foods. Additional foods may be served as desired.

(2) *Lunch, supper or supplemental food.* Additional foods may be served as desired.

(e) *Temporary unavailability of milk.* If emergency conditions prevent an institution normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches, or suppers without milk during the emergency period.

(f) *Continuing unavailability of milk.* The inability of an institution to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in paragraphs (a)(1), (2) and (3) of this section.

(g) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands the following variations from the meal requirements are authorized: A serving of a starchy vegetable, such as yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(h) *Individual substitutions.* Substitutions may be made in food listed in paragraphs (b) and (c) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(i) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis in any institution where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(j) *Meal planning.* Institutions shall plan for and order meals on the basis of current participation trends, with the objective of providing only one meal per child at each meal service. Records of participation and of ordering or preparing meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to children and may be claimed for reimbursement, unless the State agency determines that the institution has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service.

(k) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(l) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, insofar as practical, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(n) *Additional provision.* The State agency may allow institutions which serve meals prepared in schools participating in the National School Lunch and School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those Programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

(o) *Family-style meal service.* Meals may be served in a family-style setting.

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(Secs. 810, 819, and 820, Pub. L. 97-35; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779))

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982; 48 FR 40197, Sept. 16, 1983, as amended at 50 FR 8581, Mar. 4, 1985]

§ 226.21 Food service management companies.

(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company shall remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies shall adhere to the procurement standards set forth in § 226.22. Public institutions shall follow applicable State or local laws governing bid procedures. In the absence of any applicable State or local laws, and in addition to the procurement provisions set forth in § 226.22, the State agency may mandate that each institution with Program meal contracts of an aggregate value in excess of $10,000 formally advertise such contracts and comply with the following procedures intended to prevent fraud, waste, and Program abuse:

(1) All proposed contracts shall be publicly announced at least once 14 calendar days prior to the opening of bids. The announcement shall include the time and place of the bid opening;

(2) The institution shall notify the State agency at least 14 calendar days prior to the opening of the bids of the time and place of the bid opening;

(3) The invitation to bid shall not provide for loans or any other monetary benefit or terms or conditions to be made to institutions by food service management companies;

(4) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless special requirements are necessary to meet the needs of the children to be served;

(6) The bid shall be publicly opened;

(7) All bids totaling $50,000 or more shall be submitted to the State agency for approval before acceptance. All bids shall be submitted to the State agency for approval before accepting a bid which exceeds the lowest bid. State agencies shall respond to any request for approval within 10 working days of receipt;

(8) The institutions shall inform the State agency of the reason for selecting the food service management company chosen. State agencies may require institutions to submit copies of all bids submitted under this section.

(b) The institution and the food service management company shall enter into a standard contract as required by § 226.6(h). However, public institutions may, with the approval of the State agency, use their customary form of contract if it incorporates the provisions of § 226.6(h).

(c) A copy of the contract between each institution and food service management company shall be submitted to the State agency prior to the beginning of Program operations under the subject contract.

(d) Each proposed additional provision to the standard form of contract shall be submitted to the State agency for approval.

(e) A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

§ 226.22 Procurement standards.

(a) This section establishes standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

(b) These standards shall not relieve the institution of any contractual responsibilities under its contracts. The institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of

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the Program. These include, but are not limited to: source evaluation, protests of award, disputes, and claims. Violations of the law shall be referred to the local, State, or Federal authority having proper jurisdiction.

(c) Institutions may use their own procurement procedures which reflect applicable State or local laws and regulations, provided that procurements made with Program payments conform to the standards set forth in this section and in Attachment O of Office of Management and Budget Circulars A-102 and A-110, as well as to procurement requirements which may be established by the State agency, with the approval of FNS to prevent fraud, waste, and Program abuse.

(d) Institutions shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Program payments. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(1) The employee, officer or agent;

(2) Any member of his immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The institution's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Institutions may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the institution's officers, employees, or agents, or by contractors or their agents.

(e) The institution shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical.

(f) Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists;

(2) Assuring that small and minority businesses are solicited whenever they are potential sources;

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation;

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce as required;

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (b) (1) through (5) of this section; and

(7) Taking similar appropriate affirmative action in support of women's business enterprises.

(g) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this section. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

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(h) The institution shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) Program procurements shall be made by one of the following methods:

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies or other property, costing in the aggregate not more than $10,000. Institutions shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the Program, price or rate quotation shall be obtained from an adequate number of qualified sources; or

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for formal advertising to be feasible, appropriate conditions must be present, including as a minimum, the following:

(A) A complete, adequate and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the institution's business.

(C) The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under the Program, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(E) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the Program.

(3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable:

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance;

(iii) The institution shall provide mechanisms for technical evaluation of the proposal received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(iii) FNS authorizes noncompetitive negotiation; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(j) The cost plus a percentage of cost method of contracting shall not be used. Instructions shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under the Program shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(k) Institutions shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

(l) In addition to provisions defining a sound and complete procurement contract, institutions shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the institution including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded in excess of $10,000 by institutions and their contractors shall contain a provision

requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

(4) Where applicable, all contracts awarded by institutions in excess of $2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence;

(5) The contract shall include notice of USDA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of USDA requirements and regulations pertaining to copyrights and rights in data. These requirements are in § 3015.175 of the USDA Uniform Federal Assistance Regulations 7 CFR Part 3015. All negotiated contracts (except those awarded by small purchases procedures) awarded by institutions shall include a provision to the effect that the institution, FNS, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Institutions shall require contractors to maintain all required records for three years after institutions make final payment and all other pending matters are closed;

(6) Contracts and subcontracts of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329); and

(7) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(m) Institutions shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 226.23 Free and reduced-price meals.

(a) The State agency shall require each institution to submit, at the time the institution applies for Program participation, a written policy statement concerning free and reduced-price meals to be used uniformly in all child care facilities under its jurisdiction as required in this section. Institutions shall not be approved for participation nor agreements renewed unless the free and reduced-price policy statement has been approved. Pending approval of a revision of a policy statement, the existing policy shall remain in effect.

(b) Sponsoring organizations of day care homes (which may not serve meals at a separate charge to children) and other institutions which elect to serve meals at no separate charge, shall develop a policy statement consisting of an assurance to the State agency that all children are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or handicap and that there is no discrimination in the course of the food service.

(c) Independent centers and sponsoring organizations of centers which charge separately for meals shall develop a policy statement for determining eligibility for free and reduced-price meals which shall include the following:

(1) The specific criteria to be used in determining eligibility for free and reduced-price meals. The institution's standards of eligibility shall conform to the Secretary's income standards;

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals;

(3) A description of the method or methods to be used to collect payments from those children paying the full or reduced price of the meal which will protect the anonymity of the children receiving a free or reduced-price meal;

(4) An assurance which provides that the institution will establish a hearing procedure for use when benefits are denied or terminated as a result of verification:

(i) A simple, publicly announced method for a family to make an oral or written request for a hearing; (ii) an opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal; (iii) an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal; (iv) that the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing; (v) an opportunity for the family to present oral or documentary evidence and arguments supporting its position; (vi) an opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses; (vii) that the hearing shall be conducted and the determination made by a hearing official who did not participate in making the initial decision; (viii) the determination of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of that hearing record; (ix) that the family and any designated representatives shall be notified in writing of the decision of the hearing official; (x) that a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the family of the decision of the hearing official; and (xi) that such written record of each hearing shall be preserved for a period of three years and shall be available for examination by the family or its representatives at any reasonable time and place during such period;

(5) An assurance that there will be no overt identification of free and reduced-price meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap;

(6) An assurance that the charges for a reduced-price lunch or supper will not exceed 40 cents, that the charge for a reduced-price breakfast will not exceed 30 cents, and that the charge for a reduced-price supplement will not exceed 15 cents.

(d) Each institution shall annually provide the information media serving the area from which the institution draws its attendance with a public release. All media releases issued by institutions other than sponsoring organizations of day care homes, shall include the Secretary's Income Eligibility Guidelines for Free and Reduced-Price Meals. The release issued by all sponsoring organizations of day care homes, and by other institutions which elect not to charge separately for meals, shall announce the availability of meals at no separate charge. The release issued by institutions which charge separately for meals shall announce the availability of free

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and reduced-price meals to children meeting the approved eligibility criteria. All releases shall state that meals are available to all enrolled children without regard to race, color, national origin, sex, age, or handicap.

(e)(1) *Application for free and reduced-price meals.* (i) For the purpose of determining eligibility for free and reduced-price meals, institutions other than sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to parents or guardians of children enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to day care home providers who wish to enroll their eligible children in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced-price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced-price meals. Such forms and descriptive materials may *not* contain the income standards for free meals.

(ii) The application shall contain a request for the following information: (A) The names of all children for whom application is made; (B) the names of all other household members; (C) the social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one; (D) the total current income of the household; (E) a statement to the effect that "In certain cases, foster children are eligible for free and reduced-price meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us."; (F) a statement which includes substantially the following information: "Sections 9 and 17 of the National School Lunch Act require that in order for your child to be eligible for free or reduced-price meals, you must provide the social security numbers of all adult members of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations, and may include contacting employers to determine income, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93-579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and (G) the signature of an adult member of the household.

(iii) The application may also include a question as to whether the household is currently participating in the Food Stamp Program, *Provided* That applicants are informed that the provision of this information is not a condition of eligibility.

(2) *Letter to parents.* Institutions shall distribute a letter to parents or guardians of enrolled children in order to inform them of the procedures regarding eligibility for free and reduced-price meals. The letter shall accompany the application required under paragraph (e)(1) of this section and shall contain:

(i) The income standards for reduced-price meals, with an explanation that households with incomes less than or equal to the reduced-price standards would be eligible for free or reduced-price meals (the income standards for free meals shall *not* be included in letters or notices to such applicants);

(ii) How a household may make application for free or reduced-price meals for its children;

(iii) An explanation that in order to be considered eligible for free or reduced-price meals, an application must contain complete documentation of eligibility information including the total current household income, names of all household members, social security numbers of all adult household members 21 years of age or older or an indication that a household member does not possess one, and the signature of an adult household member;

(iv) The statement: "In the operation of child feeding programs, no child will be discriminated against because of race, color, national origin, sex, age, or handicap";

(v) A statement to the effect that children having parents or guardians who become unemployed are eligible for free or reduced-price meals during the period of unemployment, provided that the loss of income causes the family income during the period of unemployment to be within the eligibility standards for those meals;

(vi) A statement to the effect that in certain cases foster children are eligible for free or reduced-price meals regardless of the income of such household with whom they reside and that households wishing to apply for such benefits for foster children should contact the institution; and

(vii) An explanation that recipients of free and reduced-price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income which exceed $50 per month or $600 per year.

(3) In addition to the information listed in paragraph (e)(2) of this section pricing institutions must include in their letter to parents an explanation that indicates that: (i) The information in the application may be verified at any time during the year; and (ii) how a family may appeal a decision of the institution to deny, reduce, or terminate benefits as described under the hearing procedure set forth in paragraph (c)(4) of this section.

(4) *Determination of eligibility.* When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced-price meals, the children from that family shall be determined eligible for free or reduced-price meals. Institutions that are pricing programs shall promptly provide written notice to each family informing them of the results of the eligibility determination. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced-price meals, institution officials must consider the children from that family as not eligible for free or reduced-price meals and must consider the children as eligible for "paid" meals. When information furnished by a family of children enrolled in a pricing program does not meet the eligibility criteria for free or reduced-price meals, pricing program officials shall provide written notice to each family denied free or reduced-price benefits. At a minimum, this notice shall include: (i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application; (ii) notification of the right to appeal; (iii) instructions on how to appeal; and (iv) a statement reminding parents that they may reapply for free or reduced-price benefits at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(5) *Appeals of denied benefits.* A family that wishes to appeal the denial of an application in a pricing program shall do so under the hearing procedures established under paragraph (c)(4) of this section. However, prior to initiating the hearing procedures, the parent or guardian may request a conference to provide all affected parties the opportunity to discuss the situation, present information and obtain an explanation of the data submitted on the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The institution shall promptly schedule a fair hearing, if requested.

(f) Free, reduced-price and paid meal eligibility figures must be reported by institutions to State agencies at least once each year and shall be based on current family-size and income information of enrolled children. Such information shall be no more than 12 months old.

(g) Sponsoring organizations for family day care homes shall ensure that no separate charge for food service is imposed on families of children enrolled in participating family day care homes.

(h) *Verification of eligibility.* State agencies shall conduct verification of eligibility for free and reduced-price meals on an annual basis, in accordance with the verification procedures outlined in paragraphs (h) (1) and (2) of this section. Verification may be conducted in accordance with Program assistance requirements of § 226.6(k); however, the performance of verification for individual institutions shall occur no less frequently than once every four years. Any State may, with the written approval of FNSRO, use alternative approaches in the conduct of verification, provided that the results achieved meet the requirements of this part. If the verification process discloses deficiencies with the determination of eligibility and/or application procedures which exceed maximum levels established by FNS, State agencies shall conduct follow-up reviews for the purpose of determining that corrective action has been taken by the institution. These reviews shall be conducted within one year of the date the verification process was completed. The verification effort shall be applied without regard to race, color, national origin, sex, age, or handicap. State agencies shall maintain on file for review a description of the annual verification to be accomplished in order to demonstrate compliance with paragraphs (h) (1) and (2) of this section.

(1) *Verification procedures for nonpricing programs.* State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced-price applications on file to ensure that: (i) The application has been correctly and completely executed by parents or guardians; (ii) the institution has correctly determined and classified the eligibility of enrolled children for free or reduced-price meals based on the information included on the application submittted by the parents or guardians; and (iii) the institution has accurately reported to the State agency the number of enrolled children meeting the criteria for free and reduced-price meal eligibility and the number of enrolled children that do not meet the eligibility criteria for those meals. In addition, the State agency may conduct further verification of the information provided by parents or guardians on the approved application for Program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

(2) *Verification procedures for pricing programs.* For pricing programs; in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income information provided by parents or guardians on the approved application for free or reduced-price meals and at State agency discretion, may also include confirmation of household size. State agencies shall perform verification on a random sample of no less than 3 percent of the approved applications submitted by families of children enrolled in an institution which is a pricing program. Households shall be informed in writing that they have been selected for verification and that they are required to submit the requested verification information to confirm eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Selected households shall also be informed that if they are currently participating in the Food Stamp Program they may submit proof of current eligibility for food stamp benefits in lieu of income information. All households selected for verification shall be advised that

failure to cooperate with verification efforts will result in a termination of benefits. Sources of verification may include written evidence, collateral contacts, institution conferences, and systems of records. *Written evidence* shall be used as the primary source of verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Wherever written evidence is insufficient to confirm income information on the application or current eligibility, the State agency may use collateral contacts. *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced-price meals shall be terminated if it refuses to choose one of these options. Termination shall be made in accordance with paragraph (h)(2)(i) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies. The adult member(s) of the household may be asked to *visit the institution* for a discussion of the information on the application. Households shall be provided sufficient opportunity to schedule the conference. *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income or family size maintained by other government agencies to which the State agency can legally gain access may be used to confirm a household's income and family size. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure. Verification by State agencies for recipients of *food stamp benefits* that choose to provide evidence of food stamp participation in lieu of income information shall be limited to a review to determine that the period of eligibility for *food stamp benefits* is current. If the household chooses to provide income information or the food stamp certification period is found to have expired, the household shall be subject to routine verification of eligibility. The State agency may work with the institution to acquire the information necessary to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(i) If a household refuses to cooperate with efforts to verify, or the verification effort indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial of benefits in accordance with paragraph (e) (4) and (5) of this section. Advance notification shall be provided to families which receive a reduction or termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of: (A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal and (E) the right to reapply at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(ii) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing: (A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and (B) Households which are denied benefits upon application shall not recieve benefits.

(3) State agencies shall inform institution officials of the results of the verification effort and the action which will be taken in response to the verification findings. This notification shall be made in accordance with the procedures outlined in § 226.14(a).

(4) If the verification results disclose that an institution has inaccurately classified or reported the number of enrolled children eligible for free, reduced-price or paid meals, the State agency shall adjust institution rates of reimbursement retroactive to the month in which the incorrect eligibility figures were reported by the institution to the State agency.

(5) If the verification results disclose that a household has not reported accurate documentation on the application which would support continued eligibility for free or reduced-price meals, the State agency shall immediately adjust institution rates of reimbursement. However, this rate adjustment shall not become effective until the affected households have been notified in accordance with the procedures of paragraph (h)(2)(i) of this section and any ensuing appeals have been heard as specified in paragraph (h)(2)(ii) of this section.

(Sec. 803, Pub. L. 97-35, 95 Stat. 524 (42 U.S.C. 1758); (42 U.S.C. 6101 *et seq.*))

[47 FR 36527, Aug. 20, 1982, as amended at 49 FR 14078, Apr. 10, 1984; 50 FR 19310, May 8, 1985; 50 FR 20197, May 15, 1985]

Subpart F—Food Service Equipment Provisions

§ 226.24 Property management requirements.

Institutions and administering agencies shall follow the policies and procedures governing title, use, and disposition of equipment obtained by purchase, whose cost was acquired in whole or part with food service equipment assistance funds in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

[48 FR 41142, Sept. 14, 1983]

Subpart G—Other Provisions

§ 226.25 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Uniform Federal Assistance Regulations.

(b) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part; however, any additional requirements shall be approved by FNSRO and may not deny the Program to an eligible institution.

(c) *Value of assistance.* The value of assistance to children under the Program shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to laws relating to taxation, welfare, and public assistance programs.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

(e) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of value of less than $100, shall be fined not more

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than $1,000 or imprisoned for not more than one year, or both.

(f) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

§ 226.26 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN 02150, Trenton, NJ 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, IL 60602.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 80211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, TX 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

(Secs. 810, 819, and 820, Pub. L. 97-35; sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779))

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 40197, Sept. 6, 1983]

§ 226.27 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
226.3-226.4	0584-0055
226.6-226.10	0584-0055
226.14-226.16	0584-0055
226.23-226.24	0584-0055

[50 FR 53258, Dec. 31, 1985]

APPENDIX A—ALTERNATE FOODS FOR MEALS

VEGETABLE PROTEIN PRODUCTS

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in §210.10, §225.10 or §226.21 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble as well as substitute, in part, for one of these major protein foods. Substitute, refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in §210.10, §225.10 or §226.21.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §§210.10, 225.10, and 226.21 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate foods authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble and substitute, in part, for meat, poultry or seafood, as specified in paragraph 1 must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2.(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a flour, the blank is to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a " protein concentrate", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a " protein isolate" or " isolated protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut."

(c) Compliance with the moisture and protein provisions of paragraph 2.(b) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(d) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall be labeled in conformance with applicable sections of §102.76, tentative final regulations published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472). Adopted for the purpose of this regulation are the following:

(1) The common or usual names for a vegetable protein product used to resemble and substitute, in part, for meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term e.g., "granules," when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable."

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type (i.e., flour, concentrate, isolate) in the ingredient statement of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2.(b) (1), (2) and (3), may include a term which accurately describes the

physical form of the product, e.g., "granules" when such term is appropriate.

(e) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall meet the following nutritional specifications adopted from § 102.76 (*f*)(1)(ii)(*a*)(*b*) tentative final regulations, published by the Food and Drug Administration in the FEDERAL REGISTER of July 14, 1978 (43 FR 30472).

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, determined by performing a Protein Efficiency Ratio (PER) assay or unless FNS grants an exception by approving an alternate test.

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood).

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (micrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(4) Compliance with the nutrient provisions set forth in paragraph 2.(e) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble and substitute, in part, for meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA-FNS requirements for use in meeting a portion of the meat/meat alternate requirement of the child nutrition programs." This statement shall appear on the principal display panel area of the package.

(g) It is recommended that for vegetable protein products to be used to resemble and substitute, in part, for meat, poultry or seafood and labeled as specified in paragraph 2.(f) of this appendix, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2.(d) (1) and (2) and paragraph 2.(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.10 or § 226.21 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs." (outlined in paragraph 2. of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2. of this appendix. The presence of this label does not insure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

(National School Lunch Act, secs. 9, 13, 17, 42; U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 225.10, 226.21)

[48 FR 781, Jan. 7, 1983; 48 FR 2115, Jan. 18, 1983]

APPENDIX B—[RESERVED]

APPENDIX C—CHILD NUTRITION (CN) LABELING PROGRAM

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries

Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

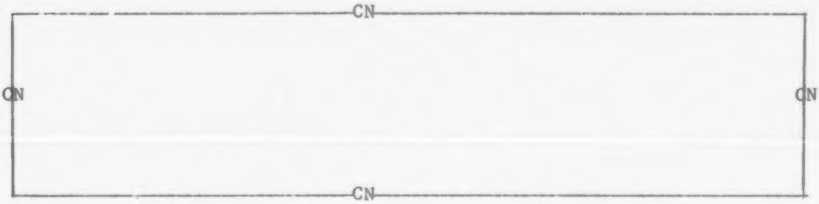
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) the "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The "CN label statement" includes the following:

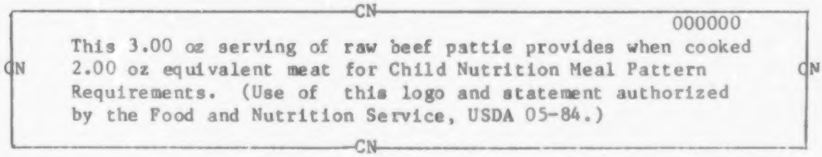
(1) The product identification number (assigned by FNS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:



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This 3.00 oz serving of raw beef pattie provides when cooked 2.00 oz equivalent meat for Child Nutrition Meal Pattern Requirements. (Use of this logo and statement authorized by the Food and Nutrition Service, USDA 05-84.)

(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or

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USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company.

Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices;

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program.

To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(National School Lunch Act, secs. 9, 13, 17; 42 U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 220.8, 225.21, 226.20)

[49 FR 18457, May 1, 1984; 49 FR 45109, Nov. 15, 1984]

PART 227—NUTRITION EDUCATION AND TRAINING PROGRAM

Subpart A—General

Sec.

227.1 General purpose and scope.
227.2 Definitions.
227.3 Administration.
227.4 Application and agreement.
227.5 Program funding.

Subpart B—State Agency Provisions

227.30 Responsibilities of State agencies.
227.31 Audits, management reviews, and evaluations.

Subpart C—State Coordinator Provisions

227.35 Responsibilities of State coordinator.
227.36 Requirements of needs assessment.
227.37 State plan for nutrition education and training.

Subpart D—Miscellaneous

227.40 Program information.
227.41 Recovery of funds.
227.42 Grant closeout procedures.
227.43 Participation of adults.
227.44 Management evaluations and reviews.
APPENDIX—APPORTIONMENT OF FUNDS FOR NUTRITION EDUCATION AND TRAINING

AUTHORITY: Sec. 15, Pub. L. 95-166, 91 Stat. 1340 (42 U.S.C. 1788), unless otherwise noted.

SOURCE: 44 FR 28282, May 15, 1979, unless otherwise noted.

Subpart A—General

§ 227.1 General purpose and scope.

The purpose of these regulations is to implement section 19 of the Child Nutrition Act (added by Pub. L. 95-166, effective November 10, 1977) which authorizes the Secretary to formulate and carry out a nutrition information and education program through a system of grants to State agencies to provide for (a) the nutritional training of educational and foodservice personnel, (b) the foodservice management training of school foodservice personnel, and (c) the conduct of nutrition education activities in schools and child care institutions. To the maximum extent possible, the Program shall fully utilize the child nutrition programs as a learning experience.

§ 227.2 Definitions.

(a) "Administrative costs" means costs allowable under Federal Management Circular 74-4, other than program costs, incurred by a State agency for overall administrative and supervisory purposes, including, but not limited to, costs of financial management, data processing, recordkeeping and reporting, personnel management, and supervising the State Coordinator.

(b) "Child Care Food Program" means the program authorized by section 17 of the National School Lunch Act, as amended.

(c) "Child Nutrition Programs" means any or all of the following: National School Lunch Program, School Breakfast Program, Child Care Food Program.

(d) "Commodity only school" means a school which has entered into an agreement under § 210.15a(b) of this subchapter to receive commodities donated under Part 250 of this chapter for a nonprofit lunch program.

(e) "Department" means the U.S. Department of Agriculture.

(f) "Federal fiscal year" means a period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(g) "FNS" means the Food and Nutrition Service of the Department.

(h) "FNSRO" means the appropriate Regional Office of the Food and Nutrition Service of the Department.

(i) "Institution" means any licensed, nonschool, public or private nonprofit organization providing day care services where children are not maintained in permanent residence, including but not limited to day care centers, settlement houses, after school recreation centers, neighborhood centers, Head Start centers, and organizations providing day care services for handicapped children and includes a sponsoring organization under the Child Care Food Program regulations.

(j) "National School Lunch Program" means the lunch program authorized by the National School Lunch Act.

(k) "Needs assessment" means a systematic process for delineating the scope, extent (quantity), reach and success of any current nutrition education activities, including those relating to:

(1) Methods and materials available inside and outside the classroom; (2) training of teachers in the principles of nutrition and in nutrition education strategies, methods, and techniques; (3) training of school foodservice personnel in the principles and practices of foodservice management; and (4) compilation of existing data concerning factors impacting on nutrition education and training such as statistics on child health and competency levels achieved by foodservice personnel.

(l) "Program costs" means costs, other than administrative costs, incurred in connection with any or all of the following:

(1) The State Coordinator's salary, and related support personnel costs, including fringe benefits and travel expenses; (2) applying for assessment and planning funds; (3) the conduct of the needs assessment; (4) the development of the State Plan; and (5) the implementation of the approved State Plan, including related support services.

(m) "Program" means the Nutrition Education and Training Program authorized by section 19 of the Child Nutrition Act of 1966, as amended.

(n) "School" means: (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

(2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long term care facilities of chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, non-profit child care centers certified as such by the Governor of Puerto Rico.

(o) "School Breakfast Program" means the program authorized by section 4 of the Child Nutrition Act of 1966, as amended.

(p) "Foodservice personnel" means those individuals responsible for planning, preparing, serving and otherwise operating foodservice programs funded by USDA grants as provided for in the National School Lunch Act and the Child Nutrition Act of 1966.

(q) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(r) "State agency" means the State educational agency.

(s) "State educational agency" means, as the State legislature may determine:

(1) The Chief State School Officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State Department of Education.

§ 227.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program.

(b) Within the States, responsibility for administration of the Program shall be in the State agency, except that FNSRO shall administer the Program with respect to nonprofit private schools or institutions in any State where the State agency is prohibited by law from administering the Program in nonprofit private schools or institutions.

§ 227.4 Application and agreement.

After the initial fiscal year of participation each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the provisions of this part. The State agency shall execute Form FNS-74, which shall constitute the written agreement.

(Approved by the Office of Management and Budget under control number 0584-0062)

(44 U.S.C. 3506)

[44 FR 28282, May 15, 1979, as amended at 47 FR 746, Jan. 2, 1982]

§ 227.5 Program funding.

(a) *Total grant.* The total grant to each State agency for each fiscal year for Program costs and administrative costs shall consist of an amount equal to 50 cents per child enrolled in schools and institutions within the State during such year, but in no event shall be less than $75,000: *Provided, however,* That a State's total grant shall be reduced proportionately if the State does not administer the Program in nonprofit private schools and institutions. If funds appropriated for a fiscal year are insufficient to pay the amount to which each State is entitled, the amount of such grant shall be ratably reduced to the extent necessary so that the total of the amounts paid to each State does not exceed the amount of appropriated funds. Each State agency which receives funds based on all children enrolled in public and nonprofit private schools and institutions shall make the Program available to those schools and institutions. Enrollment figures shall be the latest available as certified by the Department of Health, Education, and Welfare.

(b) *First fiscal year participation*—(1) *Assessment and planning grant.* A portion of the total grant shall be made available to each State agency during its first fiscal year of participation as an assessment and planning grant for:

(i) Employing a State Coordinator, as provided for in § 227.30, and related support personnel costs including fringe benefits and travel expenses, (ii) undertaking a needs assessment in the State, (iii) developing a State Plan for nutrition education and training within the State, and (iv) applying for the State assessment and planning grant.

(2) *Advances for the assessment and planning grant.* FNS shall make advances to any State desiring to participate in the Program, to enable the State to carry out the responsibilities set forth in paragraph (b)(1) of this section. Advances shall be made in two phases, in accordance with the following procedures:

(i) Initially, State agencies may receive an advance up to $35,000 for the purpose of hiring a State coordinator, as provided for in § 227.30. Application for such an advance shall be made on Form AD-623 when the State agency applies for participation in the Program. The information required for this advance shall be set out in Part III, Budget Information, Section B, Budget Categories. The State agency shall there indicate the funds required for the salary, travel, and fringe benefits of the State Coordinator, and related personnel costs necessary to carry out the duties and responsibilities of the State Coordinator.

(ii) After appointment of the State Coordinator, the State agency may receive an additional advance of up to 50 percent of the total grant to which the State agency is entitled for the first year of participation, after deduction of the advance made for the State Coordinator under § 227.5(b)(2), but not to exceed $100,000, for the purpose of undertaking a needs assessment in the State, developing a State Plan for nutrition education and training, and applying for the assessment and planning grant. Application for such advance shall be made by amending Part III, Budget Information, of Form AD-623.

(3) *Funds for implementing State plan.* (i) States receiving advances. Each State agency shall receive the remaining portion of its total grant in order to implement its State plan, which has been approved by FNS, if the State agency has carried out the responsibilities for which advances were received. With the submission of the State plan each State agency may apply for the funds remaining of its total grant.

(ii) States previously participating. Those States which previously participated may apply for their total grant upon submission of the State Plan.

(c) *Administrative costs.* Each State agency may use up to 15 percent of its total grant for up to 50 percent of its cash expenditures for administrative costs.

(d) *Payment to State agencies.* Approval of the State plan by FNS is a prerequisite to the payment of funds to the State agency. All funds made available for the Program shall be provided through a letter of credit or check, as determined by FNS.

(e) *Unobligated funds.* The State agency will release to FNS any Federal funds made available to it under the Program which are unobligated by September 30 of each fiscal year.

(f) *Funds for existing programs.* State agencies shall maintain their present level of funding for existing nutrition education and training programs. FNS funds for the Program shall augment current nutrition education and training programs and projects. Funds made available by FNS for this Program shall not replace such funds. -

Subpart B—State Agency Provisions

§ 227.30 Responsibilities of State agencies.

(a) *General.* Except to the extent that it would be inconsistent with this part, the Program shall be administered in accordance with the applicable provisions of the Departmental regulations 7 CFR 3015.

(b) *Application.* For the initial fiscal year of participation States shall make application for administration of the Program on Form and are responsible for amending Form AD-623 to request advance funding. In the initial application, in connection with the request for advance funding for the State Coordinator, Part IV, Program Narrative, of Form AD-623 shall indicate the State agency's procedures for hiring a State Coordinator and contain a justification for the dollar value of salary requested. The narrative shall also indicate the time frame for hiring the State Coordinator. In amending Form AD-623 in connection with the request for advance funding for the remaining portion of the assessment and planning grant, Part IV, Program Narrative, shall set forth the details for areas of the assessment and planning grant, other than employment of the State Coordinator.

(b-1) If any State does not apply for participation in the Program, by April 1 of a fiscal year by submitting Form AD 623 as required in § 227.30(b) and § 227.5(b)(2)(i), the State's share of the funds shall be provided to the remaining States, so long as this does not take the remaining States' grants above 50 cents per child enrolled in schools or institutions, except in those States which receive a minimum grant of $75,000 for a fiscal year.

(c) *State Coordinator.* After execution of the agreement the State agency shall appoint a nutrition education specialist to serve as a State Coordinator for the Program who may be employed on a full-time or part-time basis. The State Coordinator may be a State employee who reports directly or indirectly to the Chief State School Officer or an individual under contract with the State agency to serve as the State Coordinator. A State agency shall not contract with an organization to provide for the services of a State Coordinator. The State Coordinator, at a minimum, shall meet both of the following requirements:

(1) The State Coordinator shall have a Masters degree or equivalent experience. Equivalent experience is experience related to the position being filled or as defined by State civil service or personnel policies. If the Masters degree is not in foods and nutrition or dietetics, the Bachelors degree shall include academic preparations in foods and nutrition or dietetics.

(2) In addition, the State Coordinator shall have recognized and demonstrated skills in management and education through at least three years experience in one or more of these areas: Elementary or secondary education, but not limited to classroom teaching; foodservice management and training for adults; community nutrition or public health programs; foodservice operations for children; or community action or assistance programs.

(d) *Needs assessment.* Each State agency shall conduct an ongoing needs assessment in accordance with § 227.36 The needs assessment shall be the data base utilized in formulating the State plan for each fiscal year. For the first year of participation a State agency may apply for funds in order to carry out the needs assessment in accordance with § 227.5.

(e) *Developing and submitting the State plan.* Each State agency shall submit to the Secretary a State plan for Nutrition Education and Training in accordance with § 227.37 prior to the beginning of each fiscal year. The date of submission for the State plan shall be designated by the Secretary. The Secretary shall act on the submitted State plan within 60 days after it is received. For the first year of participation the State agency shall submit to the Secretary, within nine months after the award of the planning and assessment grant, a State plan for nutrition education and training in accordance with § 227.37.

(f) *Records and reports.* (1) Each State agency shall maintain full and complete records concerning Program operations and shall retain such records in accordance with OMB Circular A-102 Attachment C.

(2) Each State agency shall submit to FNS a quarterly Financial Status Report, Form SF-269, as required by OMB Circular A-102, Attachment H.

(3) Each State agency shall submit an annual performance report (Form FNS-42) to FNS within 30 days after the close of the Fiscal Year.

(4) Each State agency shall maintain a financial management system in accordance with Federal Management Circular 74-4 and OMB Circular A-102, Attachment G.

(5) Each State agency shall comply with the requirements of OMB Circular A-102, Attachments N and O, and Federal Management Circular 74-4, for property management and the procurement of supplies, equipment and other services with these Program funds.

(6) Any income accruing to a State or local agency because of the Program shall be used in accordance with OMB Circular A-102, Attachment E.

(g) *Nondiscrimination.* Each State agency shall ensure that Program operations are in compliance with the Department's nondiscrimination regulations (Part 15 of this title) issued under Title VI of the Civil Rights Act of 1964.

(Approved by the Office of Management and Budget under control number 0584-0062)

(44 U.S.C. 3506; E.O. 12372, July 14, 1982, 47 FR 30959, sec. 401(b) of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 28282, May 15, 1979, as amended at 45 FR 14842, Mar. 7, 1980; 47 FR 746, Jan. 7, 1982; 47 FR 22072, May 21, 1982; 48 FR 29123, June 24, 1983; 48 FR 39213, Aug. 30, 1983]

§ 227.31 Audits, management reviews, and evaluations.

(a) *Audits.* (1) Examinations by the State agencies in the form of audits or internal audits shall be performed in accord with OMB Circular A-102, Attachment G.

(b) *Management reviews.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish management evaluation and review procedures to monitor compliance with the State plan for local educational agencies and land grant colleges, other institutions of higher education and public or private nonprofit educational or research agencies, institutions, or organizations.

(2) The State agency shall require participating agencies to establish program review procedures to be used in reviewing the Agencies operations and those of subsidiaries or contractors.

(c) *Evaluations.* The State agency shall conduct formal evaluations of program activities at least annually. These evaluations shall be aimed at assessing the effectiveness of the various activities undertaken by the State and local agencies. State officials shall analyze why some activities have proved effective while others have not and shall initiate appropriate improvements. The results of the evaluations shall be used to make adjustments in ongoing activities and to plan activities and programs for the next year's State plan. The State agency shall submit a plan for evaluation of Program activities as part of the State plan in accordance with § 227.37(b)(14).

(Approved by the Office of Management and Budget under control number 0584-0062)

(44 U.S.C. 3506; E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 28282, May 15, 1979, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 29123, June 24, 1983]

Subpart C—State Coordinator Provisions

§ 227.35 Responsibilities of State coordinator.

At a minimum, the State Coordinator shall be responsible for: (a) Preparation of a budget, (b) the conduct of the needs assessment, (c) development of a State plan, (d) implementation of the approved State Plan, (e) evaluation of the progress and implementation of the State Plan, (f) coordination of the Program with the Child Nutrition Programs at the State and local levels, (g) coordination of the Program with other nutrition education and training programs conducted with Federal or State funds, (h) communication of needs and accomplishments of State nutrition education and training programs to parents and the community at large, (i) use of Program funds in compliance with all regulations, instructions, or other guidance material provided by FNS, (j) coordinating the submission and preparation of the Program financial status report (SF-269), and (k) annual evaluation of the effectiveness of the State Plan.

§ 227.36 Requirements of needs assessment.

(a) The needs assessment is an ongoing process which identifies the discrepancies between "what should be" and "what is" and shall be applied to each category listed below to enable State agencies to determine their nutrition education and training needs for each year. The needs assessment shall identify the following as a minimum:

(1) Children, teachers, and foodservice personnel in need of nutrition education and training; (2) existing State or federally funded nutrition education and training programs including their:

(i) Goals and objectives; (ii) source and level of funding; (iii) any available documentation of their relative success or failure; and (iv) factors contributing to their success or failure; (3) offices or agencies at the State and local level designated to be responsible for nutrition education and training of teachers and school foodservice personnel; (4) any relevant State nutrition education mandates; (5) funding levels at the State and local level for preservice and inservice nutrition education and training of foodservice personnel and teachers; (6) State and local individuals, and groups conducting nutrition education and training; (7) materials which are currently available for nutrition education and training programs, and determine for each: (i) Subject area and content covered; (ii) grade level; (iii) how utilized; (iv) acceptability by user; (v) currency of materials; (8) any major child nutrition related health problems in each State; (9) existing sources of primary and secondary data, including any data that has been collected for documenting the State's nutrition education and training needs; (10) available documentation of the competencies of teachers in the area of nutrition education; (11) available documentation of the competencies of foodservice personnel; (12) problems encountered by schools and institutions in procuring nutritious food economically and in preparing nutritious appetizing meals and areas where training can assist in alleviating these problems; (13) problems teachers encounter in conducting effective nutrition education activities and areas where inservice training or materials can assist in alleviating these problems; (14) problems in dietary habits of children and areas where nutrition education may assist in positive changes; (15) problems encountered in coordinating the nutrition education by teachers with the meal preparation and activities of the foodservice facility and areas where training might alleviate these problems.

(b) The needs assessment should be an ongoing process and provide not only data on current activities but also a description of the problems and needs in each category and whether training or materials would help alleviate the identified problems.

§ 227.37 State plan for nutrition education and training.

(a) *General.* Each fiscal year the State agency shall submit a State plan for Nutrition Education and Training for approval to FNS. The State plan shall be based on the needs identified from the ongoing needs assessment and evaluation of the State plans from previous years. The State plan shall be submitted in accordance with § 227.30(e). Guidance for the preparation and submission of the State plan shall be provided by FNS.

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(b) *Requirements for the State plan.* The State plan shall provide the following:

(1) Description of the ongoing needs assessment conducted within the State;

(2) The findings of the needs assessment within the State used to determine the goals and objectives of the State plan and results of the evaluation of the previous years' State plans for:

(i) Inservice training of foodservice personnel, (ii) nutrition education of children, (iii) inservice training in nutrition education for teachers;

(3) Goals and objectives of the State Plan,

(4) Identification of the priority populations to be reached during the fiscal year;

(5) Provisions for coordinating the nutrition education and training programs carried out with funds made available under this part with any related publicly supported programs being carried out within the State to include:

(i) Identification of existing programs that may be utilized, (ii) description of how representatives of such groups are to be involved in the planning and implementation of the State program; (iii) criteria and procedure for selection of such representatives;

(6) Plans to solicit advice and recommendations of the National Advisory Council on Child Nutrition, State educational or other appropriate agencies; the U.S. Department of Education; the U.S. Department of Health and Human Services; and other interested groups and individuals concerned with improvement of child nutrition.

(7) Plans, including a timetable, for reaching all children in the State with instruction in the nutritional value of foods and the relationship among food, nutrition and health, for inservice training of foodservice personnel in the principles and skills of foodservice management and nutrition and for inservice instruction for teachers in sound principles of nutrition education;

(8) Any plans for using, on a priority basis, the resources of the land-grant colleges eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503; 7 U.S.C. 301 through 305, 307, and 308) or the Act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 312 through 326 and 328), including the Tuskegee Institute;

(9) A brief description of the Program or activities to be contracted with land-grant colleges, described above, and other institutions of higher education, and other public or private nonprofit educational or research agencies, institutions or organizations for carrying out nutrition education and training activities;

(10) A brief description of pilot projects, including objectives, subject matter and expected outcomes, to be contracted with the land-grant colleges described above, other institutions of higher education, public and nonprofit educational or research agencies, institutions, or organizations for but not limited to projects for development, demonstration, testing and evaluation of curricula for use in early childhood, elementary, and secondary education programs;

(11) Identification of schools, school districts, and sponsoring agencies which may agree to participate in the nutrition education and training program;

(12) A brief description of (i) State agency sponsored pilot projects including objectives, subject matter and anticipated outcomes and (ii) nutrition education and training programs to be conducted by schools, school districts, and sponsoring agencies receiving funds under this provision including objectives, subject matter and expected outcomes;

(13) Time frame and milestones for implementation of State plans;

(14) Plans to evaluate program activities including an evaluation component for each objective of the State plan;

(15) Description of staff available to perform State agency responsibilities of the State nutrition education and training program which includes:

(i) Definition of duties and responsibilities, (ii) minimum professional qualifications, (iii) number and classification of personnel;

(16) A description of the procedures used to comply with the requirements

of Title VI of the Civil Rights Act of 1964, including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process;

(17) Plans for the conduct of audits in accordance with § 227.31;

(18) A budget detailing the use of Program funds;

(19) Description of the financial management system in accordance with § 227.30(e);

(20) Description of the management evaluation and review procedures established in accordance with § 227.31(b); and

(21) Other components that the States determine necessary.

(c) States eligible to receive additional funds pursuant to § 227.30(b-1) shall submit an amendment to the State plan to the Food and Nutrition Service Regional Office for prior approval.

[44 FR 28282, May 15, 1979, as amended at 45 FR 14842, Mar. 7, 1980; 48 FR 39213, Aug. 30, 1983]

Subpart D—Miscellaneous

§ 227.40 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Mass. 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, N.J. 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, Ga. 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Ill. 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430D, Denver, Colo. 80211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, Tex. 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, Calif. 94108.

§ 227.41 Recovery of funds.

(a) FNS may recover funds from a State agency under any of the following conditions:

(1) If FNS determines, through a review of the State agency's reports, program, or financial analysis, monitoring, audit or otherwise, that the State agency's performance is inadequate or that the State agency has failed to comply with this part or FNS instructions and guidelines.

(2) If FNS determines that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditure under the Program.

(3) If FNS determines that a State agency is not providing full and timely reports.

(b) FNS shall effect such recoveries of funds through adjustments in the amount of funds provided under the Program.

§ 227.42 Grant closeout procedures.

The requirements of OMB Circular A-102, Attachment L, are applicable in the termination of any grant under this part.

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§ 227.43 Participation of adults.

Nothing in this part shall prohibit a State or local educational agency from making available or distributing to adults education materials, resources, activities or programs authorized by this part.

§ 227.44 Management evaluations and reviews.

FNS shall establish evaluation procedures to determine whether State agencies carry out the purpose and provisions of this part, the State agency plan and FNS guidelines and instructions. To the maximum extent possible the State's performance shall be reviewed and evaluated by FNS on a regular basis including the use of public hearings.

APPENDIX—APPORTIONMENT OF FUNDS FOR NUTRITION EDUCATION AND TRAINING

Pursuant to sections 19(j) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1788), funds available for the fiscal year ending September 30, 1980, are apportioned among the States as follows:

[See footnote at the end of Table.]

State	Public schools [1]	Private schools [2]	Residential child care institutions [3]	Nonresidential child care institutions [4]	Total [6]
Connecticut	231,069	38,488	1,260	2,866	273,683
Maine	93,406	6,538	387	808	101,139
Massachusetts	420,866	68,337	2,697	5,352	497,252
New Hampshire	67,087	7,978	331	1,160	76,556
Rhode Island	62,521	12,570	304	767	76,162
Vermont	39,419	3,814	247	579	75,000
	914,368	137,725	5,226	11,532	1,099,792
Delaware	43,210	7,277	107	1,339	75,000
District of Columbia	44,309	7,511	447	2,458	75,000
Maryland	315,196	51,992	1,292	5,234	373,714
New Jersey	520,438	117,060	3,930	8,588	650,016
New York	1,204,026	274,593	14,068	19,756	1,512,443
Pennsylvania	796,518	182,089	9,026	7,312	994,945
Puerto Rico	280,750	36,776	0	0	317,526
Virginia	410,660	34,947	6,239	6,068	457,914
Virgin Islands	9,783	2,452	11	0	75,000
West Virginia	154,000	4,942	770	854	160,566
	3,778,890	719,639	35,890	51,609	4,692,124
Alabama	296,412	21,949	892	10,607	329,860
Florida	589,122	57,440	2,116	19,074	667,752
Georgia [5]	424,042	27,708	2,783	14,806	469,339
Kentucky	269,690	27,786	3,685	3,652	304,813
Mississippi	192,134	25,802	541	12,175	230,652
North Carolina	452,523	22,104	3,052	19,722	497,401
South Carolina [5]	243,200	19,225	1,255	6,559	270,239
Tennessee	339,753	17,396	1,448	7,847	366,444
	2,806,876	219,410	15,772	94,442	3,136,500
Illinois	793,671	160,491	5,343	15,971	975,476
Indiana	433,267	39,967	2,814	5,279	481,327
Michigan	747,374	85,655	3,069	7,817	843,915
Minnesota	314,333	38,994	1,245	3,135	357,707
Ohio	818,192	110,561	5,836	10,767	945,356
Wisconsin	344,962	73,707	1,922	3,579	424,170
	3,451,799	509,375	20,229	46,548	4,027,951
Arkansas	177,730	8,095	385	4,453	190,663
Louisiana	317,817	64,562	1,551	6,307	390,237
New Mexico	108,673	5,448	235	2,619	116,975
Oklahoma	229,166	3,969	1,916	8,639	243,690
Texas	1,115,829	52,654	4,163	38,934	1,211,580
	1,949,215	134,728	8,250	60,952	2,153,145
Colorado [5]	217,264	15,800	937	4,399	238,400

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State	Public schools [1]	Private schools [2]	Residential child care institutions [3]	Nonresidential child care institutions [4]	Total [5]
Iowa	221,255	25,957	3,204	2,631	253,047
Kansas	168,720	12,765	330	1,062	182,877
Missouri	350,248	54,950	1,271	6,629	413,098
Montana	63,950	3,425	75	677	75,000
Nebraska	115,891	17,629	376	1,694	135,590
North Dakota [5]	47,486	4,826	309	383	75,000
South Dakota	53,792	5,760	267	390	75,000
Utah	126,488	1,518	541	1,325	129,872
Wyoming	36,709	1,206	74	497	75,000
	1,401,803	143,836	7,384	19,687	1,652,884
Alaska	35,308	739	310	392	75,000
Samoa	3,616	778	0	0	75,000
Arizona	198,407	21,871	661	4,712	225,651
California	1,629,801	170,376	28,777	44,277	1,873,231
Guam	11,118	1,985	0	0	75,000
Hawaii	66,454	13,348	1,854	3,352	85,008
Idaho	79,009	1,868	119	860	81,856
Nevada	56,927	2,179	473	1,643	75,000
Oregon	183,441	9,379	859	3,703	197,382
Trust Territory	11,590	0	0	0	75,000
Washington	299,362	17,318	2,140	5,656	324,476
N Marianas	1,945	0	0	0	75,000
	2,576,978	239,841	35,193	64,595	3,237,604
	16,879,929	2,104,554	127,944	349,365	20,000,000

[1] Sources: (1) U.S. Department of Health, Education, and Welfare, Education Division, NCES, *Statistics of Public Schools, Fall 1977*, prepublication data, Table 5 for States and areas, except (2) Northern Marianas and Trust Territory, 1975-76 data from Department of Interior, adjust to include pre-school; Puerto Rico and Guam, Fall 1976 data.

[2] U.S. Department of Health, Education, and Welfare, Education Division, (NCES). Digest of Education Statistics, 1976, Table 46, p. 47, Northern Marianas and Trust Territory 1975-76 data from Department of Interior, adjust to include pre-school.

[3] U.S. Department of Agriculture, Food and Nutrition Service, Annual Report of Meal Service in Schools (Form FNS-47), October 1978.

[4] U.S. Department of Health, Education, and Welfare, *Day Care Centers in the U.S.; A National Profile 1976-77*, Volume 3 of the Final Report of the National Day Care Study, Table 63.

[5] A portion of these funds will be withheld from the States' allocations for use by FNS in administering the Program in nonprofit private schools or institutions.

[44 FR 70451, Dec. 7, 1979]

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

Sec.
235.1 General purpose and scope.
235.2 Definitions.
235.3 Administration.
235.4 Allocation of funds to States.
235.5 Payments to States.
235.6 Use of funds.
235.7 Records and reports.
235.8 Management evaluations and audits.
235.9 Procurement and property management standards.
235.10 [Reserved]
235.11 Other provisions.
235.12 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: Secs. 7 and 10, Pub. L. 89-642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779), unless otherwise noted.

SOURCE: 41 FR 32405, Aug. 3, 1976, unless otherwise noted.

§ 235.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making payments of funds to State agencies for use for administrative expenses incurred in supervising and giving technical assistance in connection with activities undertaken by them under the National School Lunch Program (7 CFR Part 210), the Special Milk Program (7 CFR Part 215), the School Breakfast Program (7 CFR Part 220), the Child Care Food Program (7 CFR Part 226), the Food Service Equipment Assistance Program (7 CFR Part 230[1]) and the Food Distribution Program (7 CFR Part 250).

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[1] EDITORIAL NOTE: 7 CFR Part 230 was removed at 47 FR 14135, Apr. 2, 1982.

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(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776))

[44 FR 51185, Aug. 31, 1979]

§ 235.2 Definitions.

For the purpose of this part, the term:

(a) "Act" means the Child Nutrition Act of 1966, as amended.

(b) "CCSPD" means the Child Care and Summer Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

(c) "Department" means the U.S. Department of Agriculture.

(d) "Distributing agency" means a State agency which enters into an agreement with the Department for the distribution of donated foods pursuant to Part 250 of this title.

(e) [Reserved]

(f) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(g) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the U.S. Department of Agriculture.

(h) "Fiscal year" means a period of 12 calendar months beginning October 1, 1976, and October 1 of each calendar year thereafter and ending with September 30 of the following calendar year.

(i) "Institution" means a child care center or a sponsoring organization as defined in Part 226 of this chapter.

(j)-(k) [Reserved]

(l) "OIG" means the Office of the Inspector General of the Department.

(m)-(n) [Reserved]

(o) "School" means: (1) An educational unit of high school grade or under (except for a private school with an average yearly tuition exceeding $1,500 per child) operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade.

(2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: Homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

(3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(p) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a breakfast or a lunch program therein. The term "School Food Authority" also includes a nonprofit agency or organization to which such governing body has delegated authority to operate the lunch or breakfast program in schools under its jurisdiction, provided the governing body retains the responsibility to comply with breakfast or lunch program regulations.

(p-1) "SPD" means the School Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

(q) "Secretary" means the Secretary of Agriculture.

(r) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(s) "State agency" means (1) the State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer programs under Part 210, 215, 220, 226, 230[1] or 250 of this title. Unless otherwise indicated, "State agency" shall also mean "distributing agency", as defined in § 235.2(d), when such agency is receiving funds directly from FNS under this part.

(t) "State educational agency" means, as the State Legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(u) "Tuition" means the basic charge required for a student to matriculate at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and

(2) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, to determine if the average yearly tuition exceeds $1,500 per child, add the total tuition receipts for the period of time in which the majority of children are in attendance, and divide by the total number of students enrolled during that period.

(v) "Special needs children" means children who are emotionally, mentally or physically handicapped.

(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1772, 1784, 1760); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; 46 FR 2331, Jan. 9, 1981; Amdt. 8, 47 FR 18565, Apr. 30, 1982; Amdt. 9, 48 FR 19355, Apr. 29, 1983]

§ 235.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the program for payment to States of State administrative expense funds covered by this part. Within FNS, SPD shall be responsible for administration of the program.

(b) Each State agency desiring to receive payments under this part shall enter into a written agreement with the Department. Each agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48957, Aug. 21, 1979]

§ 235.4 Allocation of funds to States.

(a) For each fiscal year, FNS shall allocate to each State agency an amount equal to one percent of the funds expended, during the second preceding fiscal year, within the State under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended. However, the amount of the allocation to any State shall not be less than $100,000 or the amount allocated to the State in the fiscal year ending September 30, 1981, whichever is greater.

(b) For the fiscal year ending September 30, 1979 and for each succeeding fiscal year, FNS shall allocate to each State agency which administers the Child Care Food Program an amount equal to the sum of: Twenty percent of the first $50,000; ten percent of the next $100,000; five percent of the next $250,000; and two and one-half percent of any remaining funds expended within the State under section 17 of the National School Lunch Act, as amended, during the second preceding fiscal year. FNS may adjust the amount of any such allocation in accordance with changes in the size of the Child Care Food Program in a State.

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[1] EDITORIAL NOTE: 7 CFR Part 230 was removed at 47 FR 14135, Apr. 2, 1982.

(1) For the fiscal year ending September 30, 1979, and for each succeeding fiscal year, FNS shall allocate $30,000 to each State agency which administers the Child Care Food Program (7 CFR Part 226).

(2) For the fiscal year ending September 30, 1979, and for each succeeding fiscal year, FNS shall allocate $30,000 to each State agency which administers the Food Distribution Program (7 CFR Part 250) in schools and institutions which participate in programs governed by Parts 210 and 220 of this title, *Provided, however*, That any State in which the Food Distribution Program in schools, as defined in § 235.2(o)(1) of this part, and the Food Distribution Program in institutions, as defined in § 235.2(o)(2) of this part, is administered by different agencies, this allocation and any Food Distribution Program allocation provided for in paragraph (b)(4) of this section shall be made to the State agency which administers the Food Distribution Program in schools.

(3) For each fiscal year, FNS shall allocate to each State agency amounts derived by application of the following four-part formula:

(i) One equal share of forty (40) percent of the funds designated by FNS for the Assessment, Improvement and Monitoring System (AIMS).

(ii) The ratio of the number of School Food Authorities participating in the National School Lunch or Commodity School Programs under the jurisdiction of the State agency to such School Food Authorities in all States times twenty (20) percent of the funds designated by FNS for AIMS.

(iii) The ratio of the number of free and reduced price meals served in School Food Authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price meals served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FNS for AIMS.

(iv) Equal shares of twenty (20) percent of the funds designated by FNS for AIMS for each School Food Authority under the jurisdiction of the State agency participating in the National School Lunch or Commodity School Programs which has an enrollment of 40,000 or more; *Provided, however*, That for State agencies with fewer than two School Food Authorities with enrollments of 40,000 or more, an equal share shall be provided to the State agency, for either, or both, of the two largest School Food Authorities which have enrollments of more than 2,000; and *Provided, further*, That State agencies with only one School Food Authority, regardless of size, shall be provided with one equal share. Funds issued under this paragraph shall be subject to the recall and reallocation provision of paragraph (e) of this section. For each fiscal year, the amount of State Administrative Expense Funds designated by FNS for AIMS and subject to allocation under this paragraph shall be equal to or greater than the amount designated by FNS for program management improvements for the fiscal year ending September 30, 1980.

(4) For the fiscal year ending September 30, 1980, and for each succeeding fiscal year, funds which remain after the allocations required in paragraphs (a), (b), (b)(1), (b)(2) and (b)(3) of this section, and after any payments provided for under paragraph (f) of this section, shall be available, as determined by the Secretary, for allocation to those State distributing agencies which are allocated funds under paragraph (b)(2) of this section and to State agencies which administer the Child Care Food Program (7 CFR Part 226). The amount of funds to be allocated to each State distributing agency for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all State distributing agencies under this paragraph as the value of donated foods delivered to the State for schools and institutions participating in programs under Parts 210, 220 and 226 of this title during the second preceding fiscal year bears to the

value of donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State Child Care agency for any fiscal year shall bear the same ratio to the total amount of funds made available for allocations to all State Child Care agencies under this paragraph as the amount of funds allocated to the State Child Care agency under paragraph (b) of this section bears to the amount allocated to all State Child Care agencies under that paragraph.

(c) Funds allocated under this part and 7 CFR Part 225 shall be used by the State agency for administrative costs incurred by it in connection with the programs governed by 7 CFR Parts 210, 215, 220, 225, 226 and 250 of this title. Funds allocated under paragraphs (a) and (b) of this section and 7 CFR Part 225 shall be used by the State agency for the program(s) for which allocated, except that the State agency may transfer up to ten percent of the funds allocated for any such program(s) to other such program(s). For the fiscal year ending September 30, 1981, and for each succeeding fiscal year, funds made available to a State agency under this part remain available for obligation and expenditure by such State agency during the fiscal year immediately following the fiscal year for which the funds were made available.

(d) By August 15 of each year, each State agency except for distributing agencies, shall submit to FNS a plan for the use of State administrative expense funds in the school nutrition programs and in the Child Care Food Program for the following fiscal year in a format prescribed by FNS. This plan shall include a staff formula for State personnel, system level supervisory personnel and operating personnel, and school level personnel. Each distributing agency receiving funds under this part shall also submit to FNS, by August 15 of each year, a plan for the use of State administrative expense funds for the following fiscal year in a format prescribed by FNS.

(e) By March 1 and June 1 of each fiscal year, each State agency shall submit to FNS, in a format prescribed by FNS, data on the use of State administrative expense funds carried over from the previous fiscal year and provided under this part for the current fiscal year. Based on this data, FNS shall recall and reallocate any carried over funds which it determines cannot or will not be expended in the current fiscal year by the State agency to which they were allocated. FNS shall also recall and reallocate any funds allocated for the current fiscal year which it determines cannot or will not be expended in the following fiscal year by the State agency to which they were allocated. Funds reallocated under this provision shall be distributed on the basis of State agency needs. Notwithstanding the above, each State shall release to FNS any funds made available to it under this part which are unexpended at the end of the fiscal year following the year for which such funds were allocated. Release of funds by the State agency shall be made as soon as practicable, but in any event not later than 30 days following demand by FNS, and shall be reflected in a related adjustment in the State agency's letter of credit or Treasury check payment.

(f) For any State agency which agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child care institutions that were previously administered by FNS, an appropriate adjustment in the administrative funds paid under this part to the State shall be made by FNS not later than the succeeding fiscal year. Such an adjustment shall consist of an amount of start-up cost assistance, negotiated with the State agency, of no less than $10,000 and not exceeding $100,000, per State.

(g) For any State agency which terminates its administration of any food service program for which State administrative expense funds are provided under this part, a reduction in the amount of such funds, negotiated with the State agency, shall be made by FNS.

(h) FNS shall have available to it the applicable amounts provided for in paragraphs (a), (b), and (b)(1) of this section, and Part 225 of this title, when it is responsible for the adminis-

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tration of a program or programs within a State.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622 (42 U.S.C. 1751); Pub. L. 96-499, secs. 201 and 204, 94 Stat. 2599; secs. 805, 812, 814 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1754, 1759a, 1774 and 1776); E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c))

[44 FR 48957, Aug. 21, 1979, as amended at 44 FR 51185, Aug. 31, 1979; 44 FR 53489, Sept. 14, 1979; 45 FR 3566, Jan. 18, 1980; 47 FR 18567, Apr. 30, 1982; Amdt. 11, 48 FR 27892, June 17, 1983; 48 FR 29123, June 24, 1983]

§ 235.5 Payments to States.

State administrative expense funds allocated to any State shall be made available by means of letters of credit or, if unavailable, Treasury checks issued in favor of the State agency. Funds shall not be made available before approval of the plan required under § 235.4(d) of this part.

(Secs. 805, 812, 814 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1754, 1729a, 1774 and 1776))

[47 FR 18567, Apr. 30, 1982]

§ 235.6 Use of funds.

(a) State administrative expense funds paid to any State may be used by State agencies to pay salaries, including employee benefits and travel expenses for administrative and supervisory personnel, for support services, for office equipment, and for staff development, particularly for monitoring and training of food service personnel at the local level in areas such as food purchasing and merchandizing. Such funds shall be used to employ additional personnel, as approved in the applicable State plan to supervise, improve management, and give technical assistance to school food authorities and to institutions in their initiation, expansion, and conduct of any programs for which the funds are made available. State agencies may also use these funds for their general administrative expenses in connection with any such programs, including travel and related expenses. Additional personnel or part-time personnel hired are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a staff year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(a-1) State Administrative Expense Funds paid to any State agency under § 235.4(b)(3) shall be available for AIMS activities associated with carrying out actions to ensure adherence to the program performance standards in § 210.2.

(b) State administrative expense funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Federal Management Circular 74-4 (32 CFR Part 255).

(c) In addition to State Administrative Expense funds made available specifically for food distribution purposes under paragraphs (b)(2) and (b)(4) of § 235.4, State administrative expense funds allocated under paragraphs (a), (b), (b)(1), (b)(3), for the Child Care Food Program under (b)(4), and (f) of § 235.4 may be used to assist in the administration of the Food Distribution Program (7 CFR Part 250) in schools and institutions which participate in programs governed by Parts 210, 220, and 226 of this title when such Food Distribution Program is administered within the State agency and may also be used to pay administrative expenses of a distributing agency, when such agency is other than the State agency and is responsible for administering all or part of such Food Distribution Program. The amounts of State administrative expense funds paid by a State agency to a distributing agency shall be based on the amount of additional funds needed to perform such supervisory and technical assistance deemed necessary by the State agency.

(d) [Reserved]

(e) Where State Administrative Expense Funds are used to acquire personal property or services the provisions of §§ 235.9 and 235.10 must be observed.

(f) [Reserved]

(g) Each State agency shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

(h) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall:

(1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years or both; or

(2) If such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(i) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (h) of this section.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338, 1339, 1340 (42 U.S.C. 1751, 1753, 1759a, 1761, 1766, 1772-1775, 1776, 1786); sec. 7(a), Pub. L. 95-627, 92 Stat. 3621, 3622 (42 U.S.C. 1751, 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37172, Aug. 22, 1978; 44 FR 37901, June 29, 1979; 44 FR 48958, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983]

§ 235.7 Records and reports.

(a) Each State agency shall keep records on the expenditure of State administrative expense funds provided under this part and Part 225 of this title. Such records shall conform with the applicable State plan for use of State administrative expense funds. The State agency shall make such records available, upon a reasonable request, to FNS, OIG, or the U.S. Comptroller General and shall maintain current accounting records of State administrative expense funds which shall adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of the submission of the final Financial Status Report, subject to the exceptions noted below:

(1) If audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Records for nonexpendable property acquired with State Administrative Expense Funds shall be retained for three years after its final disposition.

(b) Each State agency shall submit to FNS a quarterly Financial Status Report (SF-269) on the use of State administrative expense funds provided for each fiscal year under this part. Reports shall be postmarked and/or submitted to FNS no later than 30 days after the end of each quarter of the fiscal year and, in case of funds carried over under § 235.4(c) of this part, each quarter of the following fiscal year until all such funds have been obligated and expended. Obligations shall be reported for the fiscal year in which they occur. Each State agency shall submit a final Financial Status Report for each fiscal year's State administrative expense funds. This report shall be postmarked and/or submitted to FNS no later than 30 days after the end of the fiscal year following the fiscal year for which the funds were initially made available. Each State agency shall also submit an annual report containing information on School Food Authorities under agreement with the State agency to participate in the National School Lunch or Commodity School programs.

(c) State agencies operating those programs governed by Parts 210, 215, 220 and 226 and those State agencies which are distributing agencies eligible for SAE funds shall participate in surveys and studies of programs authorized under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended, when such studies and surveys are directed by Congress and requested by the Secretary of Agriculture. The aforementioned State agencies shall encourage individual School Food Authorities, child care institutions, and distributing agencies (as applicable) to participate in such studies and surveys. Distribution of FY '80 State Administrative Expense funds to an individual State agency is contingent upon that State agency's cooperation in such studies and surveys.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); 93 Stat. 827, Pub. L. 96-108 (42 U.S.C. 1776); secs. 804, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1756, 1759, 1771, 1773 and 1785); sec. 7(a), Pub. L. 95-627, 92 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37173, Aug. 22, 1978; 44 FR 48958, Aug. 21, 1979; 45 FR 8563, Feb. 8, 1980, Amdt. 9, 48 FR 195, Jan. 4, 1983; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 12, 49 FR 18989, May 4, 1984]

§ 235.8 Management evaluations and audits.

(a) Each State agency shall provide for audits of State agency operations under this part to be made with reasonable frequency, but beginning in fiscal year 1978 once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in OMB Circular A-102. Audits may be made by State Auditors General, by State Controllers, or other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of such audits which shall (1) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization, and (2) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary, (1) perform on-site test audits, and (2) review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FNS with full opportunity to conduct management evaluations of all operations of the State agency under this part and shall provide OA with full opportunity to conduct audits of all such operations. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request by FNS, OA, or the U.S. Comptroller General.

(Sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 804, 805, 812, 814, 816, 817 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1754, 1756, 1759, 1759a, 1771, 1773, 1774, 1776, and 1785))

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 51186, Aug. 31, 1979; Amdt. 7, 47 FR 18567, Apr. 30, 1982; Amdt. 9, 48 FR 195, Jan. 4, 1983]

§ 235.9 Procurement and property management standards.

(a) *Requirements.* State agencies shall comply with the requirements of the Office of Management and Budget (OMB) Circular A-102 and the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart S (46 FR 55658) concerning the procurement of supplies, equipment and other services with State Administrative Expense Funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in OMB Circular A-102 and 7 CFR Part 3015 do not relieve the State agency of any contractual responsibilities under its contract. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds adhere to the standards set forth in OMB Circular A-102 and 7 CFR Part 3015.

(d) *Property acquired with State administrative expense funds.* State Agencies shall comply with the requirements of OMB Circular A-102 and 7 CFR Part 3015, Subpart R (46 FR 55654) in their utilization and disposition of property acquired in whole or in part with State Administrative Expense Funds.

(Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-890 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 9, 48 FR 19355, Apr. 29, 1983]

§ 235.10 [Reserved]

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources in any fiscal year for the administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child Care Food Program shall not be less than that expended or obligated in fiscal year 1977. Failure of a State to maintain this level of funding will result in the total withdrawal of SAE funds.

(b) *Sanctions imposed.* (1) FNS may recover, withhold or cancel payment of up to one hundred (100) percent of the funds payable to a State agency under this part, whenever it is determined by FNS that the State agency has failed to comply with the requirements contained in this part and in Parts 210, 215, 220 and 226 of this title.

(2) In addition to the general provisions found in paragraph (b)(1) of this section, FNS may, for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) percent of the funds payable to, and to be used by, a State agency under § 235.4(a) and § 235.4(b)(3) for administration of school nutrition programs in FNS determines that a State agency is deficient in one or more of the following:

(i) Implementing the requirements in § 210.14 of this title;

(ii) Conducting the number of reviews or audits required in § 210.14 of this title within the timeframes specified;

(iii) Covering the performance standards set forth in § 210.2 in the conduct of reviews or audits as required in § 210.14, carrying out corrective action, and assessing and recovering claims as prescribed in § 210.14 and § 210.16 of this title;

(iv) Conducting reviews or audits with sufficient thoroughness to identify violations of the performance standards listed in § 210.2 of this title; and,

(v) Meeting the reporting deadlines prescribed for the forms (FNS-10 and SF-269) required under § 210.14(g)(2) of this title.

(3) Furthermore, FNS may for any fiscal year, recover, withhold or cancel payment of up to thirty-three and one-third (33⅓) percent of the funds payable to, and to be used by, a State agency under § 235.4(b), § 235.4(b)(1) and § 235.4(b)(4) for administration of the Child Care Food Program if FNS determines that a State agency is deficient in meeting the reporting deadlines prescribed for the forms (FNS-44 and SF-269) required under § 226.7(d) of this title.

(4) In establishing the amounts of funds to be recovered, withheld or cancelled under paragraph (b)(2) and (b)(3) of this section, FNS shall determine the current or projected rate of funds usage by the State agency for all funds subject to sanction, and after considering the severity and longevity of the cumulative deficiencies, shall apply an appropriate sanction percentage to the amount so determined. During the fiscal year under sanction, a State agency may not use funds not included in the determination of funds usage to replace sanctioned funds. The maximum sanction percentage that may be imposed against a State agency for failure within one or more of the five deficiency areas specified in paragraph (b)(2) of this section for any fiscal year shall be thirty-three and one-third (33⅓) percent of the

funds payable under § 235.4(a) and § 235.4(b)(3) for administration of school nutrition programs for such fiscal year.

(5) Before carrying out any sanction against a State agency under this section, the following procedures shall be implemented:

(i) FNS shall notify the Chief State School Officer or equivalent of the deficiencies found and of its intention to impose sanctions unless an acceptable corrective action plan is submitted and approved by FNS within 60 calendar days.

(ii) The State agency shall develop a corrective action plan with specific timeframes to correct the deficiencies and/or prevent their future recurrence. The plan will include dates by which the State agency will accomplish such corrective action.

(iii) FNS shall review the corrective action plan. If it is acceptable, FNS shall issue a letter to the Chief State School Officer or equivalent approving the corrective action plan, and detailing the technical assistance that is available to the State agency to correct the deficiencies. The letter shall advise the Chief State School Officer or equivalent of the specific sanctions to be imposed if the corrective action plan is not implemented within timeframes set forth in the approved plan.

(iv) Upon advice from the State agency that corrective action has been taken, FNS shall assess such action and, if necessary, shall perform a follow-up review to determine if the noted deficiencies have been corrected. FNS shall then advise the State agency if the actions taken are in compliance with the corrective action plan or if additional corrective action is needed.

(v) If an acceptable corrective action plan is not submitted and approved within 60 calendar days, or if corrective action is not completed within the time limits established in the corrective action plan, FNS may impose a sanction by assessing a claim against the State agency or taking action in accordance with 7 CFR Part 3015, Subpart L. FNS shall notify the Chief State School Officer or equivalent of any such action.

(vi) If, subsequent to the imposition of any sanction, FNS determines that the noted deficiencies have been resolved and that the school nutrition programs are being operated in an acceptable manner, FNS may return to the State agency or restore to the State agency's Letter of Credit (LOC) part or all of any sanctioned SAE funds.

(6) In carrying out sanctions under this part for any fiscal year, FNS may reduce the amount of allocated SAE funds payable to a State agency in whole or in part during such fiscal year and during following fiscal years if necessary.

(7) Any State agency which has a sanction imposed against it in accordance with this paragraph shall not be eligible to participate in any reallocation of SAE funds under § 235.4(e) of this part during any fiscal year in which such sanction is being applied.

(c) *Termination for convenience.* FNS and the State agency may terminate the State agency's participation under this part in whole, or in part, when both parties agree that continuation would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

(d) In taking any action under paragraphs (b) or (c) of this section, FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015 Subpart N concerning grant suspension, termination and closeout procedures.

(e) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part.

(f) *Administrative review process.* When FNS asserts a sanction against a State agency under the provisions of paragraph (b) of this section, the State agency may appeal the case and be afforded a review by an FNS Administrative Review Officer of the record including any additional written submissions prepared by the State agency.

(1) FNS shall provide a written notice and shall ensure the receipt of such notice when asserting a sanction against a State agency.

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Staff, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302 for a review of the record. Such request must be postmarked within 30 calendar days of the date of delivery of the sanction notice and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW." If the State agency does not request a review within 30 calendar days of the date of delivery of the sanction notice, the administrative decision on the sanction shall be final.

(3) Upon receipt of a request for review, FNS shall promptly provide the State agency with a written acknowledgment of the request. The acknowledgment shall include the name and address of the FNS Administrative Review Officer reviewing the sanction. The acknowledgment shall also notify the State agency that any additional information in support of its position must be submitted within 30 calendar days of the receipt of the acknowledgment.

(4) When a review is requested, the FNS Administrative Review Officer shall review all available information and shall make a final determination within 45 calendar days after receipt of the State agency's additional information. The final determination shall take effect upon delivery of the written notice of this final decision to the State agency.

(5) The final determination of the FNS Administrative Review Officer will be the Department's final decision in the case and will not be subject to reconsideration.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 7(a), Pub. L. 95-627, 93 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48958, Aug. 21, 1979; Amdt. 6, 47 FR 14135, Apr. 2, 1982; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 12, 49 FR 18989, May 4, 1984]

§ 235.12 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
235.3(b)	0584-0327
235.4 (d), (e)	0584-0319
235.7(a)	0584-0319
235.7(b)	0584-0341
235.7(c)	0584-0319
235.8 (a), (b)	0584-0319
235.9 (c), (d)	0584-0319
235.11(b)(2)	0584-0006 0584-0002 0584-0341
235.11(b)(5)(ii)	0584-0319
235.11(f)	0584-0319

[50 FR 53258, Dec. 31, 1985]

PART 240—CASH IN LIEU OF DONATED FOODS

Sec.

240.1 General purpose and scope.
240.2 Definitions.
240.3 Cash in lieu of donated foods for program schools.
240.4 Cash in lieu of donated foods for nonresidential child care institutions.
240.5 Cash in lieu of donated foods for commodity schools.
240.6 Funds for States which have phased out facilities.
240.7 Payments to States.
240.8 Payments to program schools, service institutions, nonresidential child care institutions and commodity schools.
240.9 Use of funds.
240.10 Unobligated funds.
240.11 Records and reports.

AUTHORITY: Sec. 10, Pub. L. 89-642, 80 Stat. 889, as amended (42 U.S.C. 1779); sec. 3, Pub. L. 93-326, 88 Stat. 286, as amended (42 U.S.C. 1755); secs. 12 and 16, Pub. L. 94-105, 89 Stat. 515, 522 (42 U.S.C. 1765, 1766);

secs. 802 and 813, Pub. L. 97-35 (42 U.S.C. 1755 and 42 U.S.C. 1762a).

SOURCE: 47 FR 15982, Apr. 13, 1982, unless otherwise noted.

§ 240.1 General purpose and scope.

(a) Each school year the Department programs agricultural commodities and other foods to States for delivery to program and commodity schools, nonresidential child care institutions, and service institutions pursuant to the regulations governing the donation of foods for use in the United States, its territories and possessions and areas under its jurisdiction (7 CFR Part 250).

(b) Section 6(b) of the Act requires that not later than May 15 of each school year, the Secretary shall make an estimate of the value of the agricultural commodities and other foods that will be delivered during that school year for use in lunch programs by schools participating in the National School Lunch Program (7 CFR Part 210). If this estimate is less than the total level of assistance authorized under section 6(e) of the Act the Secretary shall pay to the State administering agency not later than June 15 of that school year, an amount of funds equal to the difference between the value of donated foods as then programmed for that school year and the total level of assistance authorized under such section.

(c) Section 6(e) of the Act requires that the national average value of foods donated to schools participating in the National School Lunch Program, or cash payments made in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 6(e) further requires that not less than 75 percent of the assistance under that section shall be in the form of donated foods for the National School Lunch Program.

(d) Section 12(g) of the Act provides that whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(e) Section 14(f) of the Act provides that the value of foods donated to States for use in commodity schools for any school year shall be the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act. Section 14(f) also provides that such schools shall be eligible to receive up to five cents of such value in cash for processing and handling expenses related to the use of the donated foods.

(f) Section 17(h) of the Act provides that the value of foods donated to States for use in nonresidential child care institutions participating in the Child Care Food Program (7 CFR Part 226), for any school year shall be, as a minimum, the amount obtained by multiplying the number of lunches and suppers served during that school year by the rate established for lunches for that school year under section 6(e) of the Act. Section 17(h) also requires the payment of cash in lieu of donated foods to States for use in such participating institutions, upon the application of the State agency.

(g) Section 16 of the Act provides that a State which has phased out its food distribution facilities prior to June 30, 1974, may elect to receive cash payments in lieu of donated foods for the purposes of the applicable child nutrition programs—i.e., the National School Lunch Program, the Summer Food Service Program for Children (7 CFR Part 225) and the Child Care Food Program.

(h) These regulations prescribe the methods for determination of the amount of payments, the manner of disbursement and the requirements for accountability for funds when these respective statutory authorities require the Department to make cash payments in lieu of donating agricultural commodities and other foods.

§ 240.2 Definitions.

For the purpose of this part the term:

"*Act*" means the National School Lunch Act, as amended.

"*Child Care Food Program*" means the Program authorized by section 17 of the Act.

"*Commodity school*" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit lunch program under agreement with the State educational agency or FNSRO and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under this part for processing and handling the foods.

"*Department*" means the U.S. Department of Agriculture.

"*Distributing agencies*" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated foods to program schools, commodity schools, and nonresidential child care institutions.

"*Donated-food processing and handling expenses*" means any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods for use in its lunch program.

"*Donated foods*" means foods donated, or available for donation, by the Department under any of the legislation referred to in Part 250 of this chapter.

"*Fiscal year*" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"*FNS*" means the Food and Nutrition Service of the Department.

"*FNSRO*" means the appropriate Food and Nutrition Service Regional Office.

"*National School Lunch Program*" means the Program authorized by sections 4 and 11 of the Act.

"*Nonprofit*" means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified as nonprofit by its Governor.

"*Nonresidential child care institution*" means any child care center, day care home, or sponsoring organization (as those terms are defined in Part 226 of this chapter) which participates in the Child Care Food Program.

"*Program school*" means a school which participates in the National School Lunch Program.

"*School*" means (1) an educational unit of high school grade or under except for a private school with an average yearly tuition exceeding $1,500 per child, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade; (2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers; and (3) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"*School food authority*" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit lunch program therein.

"*School year*" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"*Secretary*" means the Secretary of Agriculture.

"*Service institutions*" means camps or sponsors (as those terms are defined in Part 225 of this chapter) which participate in the Summer Food Service Program for Children.

"*Special needs children*" means children who are emotionally, mentally or physically handicapped.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American-Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

"*State agency*" means the State educational agency or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer, in the State, the National School Lunch Program, the Child Care Food Program, the Summer Food Service Program for Children, or nonprofit lunch programs in commodity schools.

"*State educational agency*" means, as the State legislature may determine, (1) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State Department of Education.

"*Summer Food Service Program for Children*" means the Program authorized by section 13 of the Act.

"*Tuition*" means any educational expense required by the school as part of the students' educational program; not including transportation fees for commuting to and from school, and the cost of room and board. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (2) state, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In a school which varies tuition, the average yearly tuition shall be calculated by dividing the total tuition receipts for the current school year by the total number of students enrolled for purposes of determining if the average yearly tuition exceeds $1,500 per child.

§ 240.3 Cash in lieu of donated foods for program schools.

(a) Not later than May 15 of each school year, FNS shall make an estimate of the value of agricultural commodities and other foods that will be delivered to States during the school year under the food distribution regulations (7 CFR Part 250) for use in program schools. If the estimated value is less than the total value of assistance authorized under section 6(e) of the Act for the National School Lunch Program during that school year, FNS shall determine the difference between the value of the foods then programmed for each State for the school year and the required value and shall pay the difference to each State agency not later than June 15 of that school year.

(b) Notwithstanding any other provision of this section, in any State in which FNS administers the National School Lunch Program in any of the schools of the State, FNS shall withhold from the funds payable to that State under this section an amount equal to the ratio of the number of lunches served in schools in which the program is administered by FNS to the total number of lunches served during that school year in all program schools in the State.

§ 240.4 Cash in lieu of donated foods for nonresidential child care institutions.

(a) For each school year any State agency may, upon application to FNS prior to the beginning of the school year, elect to receive cash in lieu of donated foods for use in nonresidential child care institutions participating in the Child Care Food Program. FNS shall pay each State agency making such election the required amount based upon the number of lunches and suppers served in the State's nonresidential child care institutions participating in the Child Care Food Program during that school year. However, if a State agency has elected to receive a combination of donated foods and cash, the required amount shall be reduced based upon the number of such lunches and suppers served for which the State receives donated foods.

(b) Notwithstanding any other provision of this section in any State in which FNS administers the Child Care Food Program in any nonresidential child care institution, FNS shall withhold from the funds payable to such State under this section an amount equal to the ratio of the number of lunches and suppers served in such institutions in which the program is administered by the FNS and for which cash payments are provided to the total number of lunches and suppers served in that program and for which cash in lieu of payments are received, in all nonresidential child care institutions in the State.

§ 240.5 Cash in lieu of donated foods for commodity schools.

(a) The school food authority of a commodity school may elect (1) to receive cash payments in lieu of up to five cents per lunch of the value specified in § 250.4(b)(2)(ii) of this chapter to be used for donated-food processing and handling expenses, or (2) to have such payments retained for use on its behalf by the State agency. The school food authority shall consult with commodity schools before making the election.

(b) When a school food authority makes an election regarding receipt of cash payments and the amount of any payments to be received under this paragraph, such election shall be binding on the school food authority for the school year to which the election applies.

(c) The State agency shall (1) no later than May 14, 1982 for the school year ending June 30, 1982, and no later than August 15 of each subsequent school year, contact all school food authorities of commodity schools to learn their election regarding cash payments under this section and the amount of any such payments, and (2) forward this information to the distributing agency and FNSRO, in accordance with § 210.14(d)(2) of this chapter.

§ 240.6 Funds for States which have phased out facilities.

Notwithstanding any other provision of this part, any State which phased out its food distribution facilities prior to June 30, 1974, may, for purposes of the National School Lunch Program, the Summer Food Service Program for Children, and the Child Care Food Program, elect to receive cash payments in lieu of donated foods. Where such an election is made, FNS shall make cash payments to such State in an amount equivalent in value to the donated foods (or cash in lieu thereof) to which the State would otherwise have been entitled under section 6(e) of the Act, if it had retained its food distribution facilities.

§ 240.7 Payments to States.

(a) Funds to be paid to any State agency under § 240.3 of this part for disbursement to program schools shall be made available by means of United States Treasury Department checks. The State agency shall use the funds received without delay for the purpose for which issued.

(b) Funds to be paid to any State agency under § 240.4(a) for disbursement to nonresidential child care institutions and funds to be paid to any State agency under § 240.6 for disbursement to program schools, service institutions, or nonresidential child care institutions shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall:

(1) Obtain funds needed to pay school food authorities, nonresidential child care institutions, and service institutions, as applicable through presentation by designated State Officials of a Payment Voucher on Letter of Credit (Treasury Form GFO 7578) in accordance with procedures prescribed by FNS and approved by the United States Treasury Department;

(2) Submit requests for funds on a monthly basis in such amounts as necessary to make payments with respect to meals served the previous month;

(3) Use the funds received without delay for the purpose for which drawn.

(c) FNS shall make any cash payments elected under § 240.5 of this part by increasing the amount of the Letter of Credit or, where applicable, of the Federal Treasury check, in accordance with the information provided under § 240.5(c) of this part.

(d) Funds received by State agencies pursuant to this part for disbursement to program schools and to commodity schools shall not be subject to the matching provisions of § 210.6 of Part 210 of this chapter.

§ 240.8 Payments to program schools, service institutions, nonresidential child care institutions and commodity schools.

(a) Each State agency shall promptly and equitably disburse any cash received in lieu of donated foods under this part to eligible program schools, service institutions and nonresidential child care institutions, as applicable. Funds withheld from States under § 240.3 and § 240.4 shall be disbursed to eligible program schools, service institutions, and nonresidential child care institutions by FNSRO's in the same manner.

(b) Unless the school food authority of a commodity school elects to have cash payments for donated-food processing and handling expenses retained for use on its behalf by the State agency, the State agency shall make such payments to the school food authority of such a school on a monthly basis in an amount equal to the number of lunches served (as reported in accordance with § 210.13(a) of this chapter) times the value per lunch elected by the school food authority in accordance with § 240.5 of this part. For the period November 11, 1981, through the close of the month in which this part is published in the FEDERAL REGISTER, a retroactive payment shall be made, where applicable, to the school food authority of a commodity school based on the number of lunches served during that period which meet the nutritional requirements specified in § 210.10 of this chapter.

§ 240.9 Use of funds.

(a) Funds made available to school food authorities (for program schools), service institutions and nonresidential child care institutions under this part shall be used only to purchase United States agricultural commodities and other foods for use in their food service under the National School Lunch Program, Child Care Food Program, or Summer Food Service Program for Children, as applicable. Such foods shall be limited to those necessary to meet the requirements set forth in § 210.10 of Part 210 of this chapter, § 225.10 of Part 225 of this chapter and § 226.10 of Part 226 of this chapter, respectively. On or before disbursing funds to school food authorities (for program schools), service institutions and nonresidential child care institutions, State agencies and FNSRO's shall notify them of the reason for special disbursement, the purpose for which these funds may be used, and, if possible, the amount of funds they will receive.

(b) Cash payments received under § 240.5 of this part shall be used only to pay donated-food processing and handling expenses of commodity schools.

(c) Funds provided under this part shall be subject to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

§ 240.10 Unobligated funds.

State agencies shall release to FNS any funds paid to them under this part which are unobligated at the end of each fiscal year. Release of funds by any State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FNS. Release of funds shall be reflected by a related adjustment in the State agency's Letter of Credit where appropriate or payment by State check where the funds have been paid by United States Treasury Department check.

§ 240.11 Records and reports.

(a) State agencies and distributing agencies shall maintain records and reports on the receipt and disbursement of funds made available under this part, and shall retain such records and reports for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(b) State agencies shall establish controls and procedures which will assure that the funds made available under this part are not included in determining the State's matching requirements under § 210.6 of Part 210 of this chapter.

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Sec.

245.1 General purpose and scope.
245.2 Definitions.
245.3 Eligibility standards and criteria.
245.4 Exceptions for Puerto Rico and the Virgin Islands.
245.5 Public announcement of the eligibility criteria.
245.6 Application for free and reduced price meals and free milk.
245.6a Verification requirements.
245.7 Hearing procedure for families and School Food Authorities.
245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.
245.9 Special assistance certification and reimbursement alternatives.
245.10 Action by School Food Authorities.
245.11 Action by State agencies and FNSROs.
245.12 Fraud penalties.
245.13 Special responsibilities of State agencies.
245.14 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2-12, 60 Stat. 230, as amended (43 U.S.C. 1751-60), unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 38 FR 14957, June 7, 1973.

§ 245.1 General purpose and scope.

(a) This part established the responsibilities of State agencies, Food and Nutrition Service Regional Offices (where applicable), and School Food Authorities in providing free and reduced price meals and free milk in the National School Lunch Program (7 CFR Part 210), the School Breakfast Program (7 CFR Part 220), the Special Milk Program for Children (7 CFR Part 215), and commodity schools. Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price lunches, breakfasts, and at the option of the School Food Authority for schools participating only in the Special Milk Program free milk to eligible children.

(b) This part sets forth the responsibilities under these Acts of State agencies, the Food and Nutrition Service Regional Offices, and School Food Authorities with respect to the establishment of income guidelines, determination of eligibility of children for free and reduced price meals, and for free milk and assurance that there is no physical segregation of, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30337, Aug. 22, 1974, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, July 23, 1982]

§ 245.2 Definitions.

(a) "Adult" means any individual 21 years of age or older.

(a-1) "Commodity school" means a school which does not participate in the National School Lunch Program under Part 210 of this chapter, but which enters into an agreement as provided in § 210.15a(b) to receive commodities donated under Part 250 of this chapter for a nonprofit lunch program.

(a-2) "Current income" means income, as defined in § 245.6(a), received during the month prior to application and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

(a-3) "Documentation" means the completion of the following information on a free and reduced price application: (1) Names of all household members; (2) social security number of each adult household member or an indication that a household member does not possess one; (3) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; or in lieu of income information, the Food Stamp Program case number for those households currently receiving food stamps; and (4) signature of an adult member of the household.

(b) "Family" means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

(c) "FNSRO where applicable" means the appropriate Food and Nutrition Service Regional Office when that agency administers the National School Lunch Program, School Breakfast Program or Special Milk Program with respect to nonprofit private schools.

(d) "Free meal" means a meal for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(d-1) "Free milk" means milk served under the regulations governing the Special Milk Program and for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(d-2) "Household" means "family" as defined in § 245.2(b).

(e) "Income eligibility guidelines" means the family-size income levels prescribed annually by the Secretary for use by States in establishing eligibility for free and reduced price meals and for free milk.

(f) "Meal" means a lunch or a breakfast which meets the applicable requirements prescribed in §§ 210.10, 210.15a, and 220.8 of this chapter.

(f-1) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(g) "Reduced price meal" means a meal which meets all of the following criteria: (1) The price shall be less than the full price of the meal; (2) the price shall not exceed 40 cents for a lunch and 30 cents for a breakfast; and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

(h) "Service institution" shall have the meaning ascribed to it in Part 225 of this chapter.

(i) "School", "school food authority", and other terms and abbreviations used in this part shall have the meanings ascribed to them in Part 210 of this chapter.

(j) "Special Assistance Certification and Reimbursement Alternatives" means the two optional alternatives for free and reduced price meal application and claiming procedures in the National School Lunch Program and School Breakfast Program which are available to those School Food Authorities with schools in which at least 80 percent of the enrolled children are eligible for free or reduced price meals, or schools which are currently, or who will be serving all children free meals.

(k) "Verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility or current participation in the Food Stamp Program. At State or local discretion verification may also include confirmation of any other information in the application which is defined as documentation in § 245.2(a-3).

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14957, June 7, 1973; Amdt. 6, 39 FR 30338, Aug. 22, 1974; 40 FR 57207, Dec. 8, 1975; Amdt. 10, 41 FR 28783, July 13, 1976; 41 FR 30012, July 21, 1976; Amdt. 19, 45 FR 67287, Oct. 10, 1980; 46 FR 51368, Oct. 20, 1981; 47 FR 31852, July 23, 1982; 49 FR 26034, June 26, 1984]

§ 245.3 Eligibility standards and criteria.

(a) Each State agency, or FNSRO where applicable, shall by July 1 of each year announce family-size income standards to be used by School Food Authorities of schools under the jurisdiction of such State agency, or FNSRO where applicable, in making eligibility determinations for free or reduced price meals and for free milk. Such family size income standards for free and reduced price meals and for free milk shall be in accordance with Income Eligibility Guidelines published by the Department by notice in the FEDERAL REGISTER.

(b) Each School Food Authority shall establish eligibility criteria for free and reduced price meals and for free milk in conformity with the family-size income standards prescribed by the State agency, or FNSRO where applicable, under paragraph (a) of this section. Such criteria shall:

(1) For all schools under the jurisdiction of the School Food Authority, specify the uniform family-size income criteria to be used for determining eligibility for free and reduced price meals in schools participating in the National School Lunch or School Breakfast Programs and in commodity-only schools, and for determining eligibility for free milk when the School Food Authority has chosen to serve free milk in its schools participating in the Special Milk Program; and

(2) Provide that all children from a family meeting family-size income criteria and attending any school under the jurisdiction of the School Food Authority which participates under the National School Lunch Program, School Breakfast Program, Special Milk Program, or is a commodity only school shall be provided the same benefits. The School Food Authority's eligibility criteria shall be a part of the policy statement required under § 245.10 and shall be publicly announced in accordance with the provisions of § 245.5.

(c) Each School Food Authority shall serve free and reduced price meals or free milk in the respective programs to children eligible under its eligibility criteria. When a child is not a member of a family as defined in § 245.2(b), the child shall be considered a family of one. In any school which participates in more than one of the child nutrition programs, eligibility shall be applied uniformly so that eligible children receive the same benefits in each program. If a child transfers from one school to another school under the jurisdiction of the same School Food Authority, his eligibility for free or reduced price meals or for free milk, if previously established, shall be transferred to, and honored by, the receiving school if it participates in the National School Lunch Program, School Breakfast Program, Special Milk Program and the School Food Authority has elected to provide free milk, or is a commodity-only school.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 42 U.S.C. 1785, 1766, 1772, 1773(e), sec. 203, Pub. L. 96-499, 94 Stat. 2599; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975; 40 FR 58281, Dec. 16, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; Amdt. 13, 44 FR 33049, June 8, 1979; 47 FR 31852, July 23, 1982]

§ 245.4 Exceptions for Puerto Rico and the Virgin Islands.

Because the State agencies of Puerto Rico and the Virgin Islands provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria. Instead, such State agencies may use a statistical survey to determine the number of children eligible for free or reduced price meals and milk on which a percentage factor for the withdrawal of special cash assistance funds will be developed subject to the following conditions:

(a) State agencies shall conduct a statistical survey once every three years in accordance with the standards provided by FNS;

(b) State agencies shall submit the survey design to FNS for approval before proceeding with the survey;

(c) State agencies shall conduct the survey and develop the factor for withdrawal between July 1 and December 31 of the first school year of the three-year period;

(d) State agencies shall submit the results of the survey and the factor for fund withdrawal to FNS for approval before any reimbursement may be received under that factor;

(e) State agencies shall keep all material relating to the conduct of the survey and determination of the factor for fund withdrawal in accordance with the record retention requirements in § 210.8(e)(14) of this chapter;

(f) Until the results of the triennial statistical survey are available, the factor for fund withdrawal will be based on the most recently established percentages. The Department shall make retroactive adjustments to the States' Letter of Credit, if appropriate, for the year of the survey;

(g) If any school in these States wishes to charge a student for meals, the State agency, School Food Authority and school shall comply with all the applicable provisions of this part and Parts 210, 215 and 220 of this chapter.

(Sec. 9, Pub. L. 95-166, 91 Stat 1336 (42 U.S.C. 1759a); secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; 44 U.S.C. 3506)

[Amdt. 18, 45 FR 52771, Aug. 8, 1980, as amended at 46 FR 51366, Oct. 20, 1981; 47 FR 746, Jan. 7, 1982]

§ 245.5 Public announcement of the eligibility criteria.

(a) After the State agency, or FNSRO where applicable, notifies the School Food Authority that its criteria for determining the eligibility of children for free and reduced price meals and for free milk have been approved, the School Food Authority shall publicly announce such criteria: *Provided however,* That no such public announcement shall be required for boarding schools, schools as defined in § 210.2(o)(2) of Part 210 of this chapter, or a school which includes food service fees in its tuition, where all attending children are provided the same meals or milk. Such announcements shall be made at the beginning of each school year or, if notice of approval is given thereafter, within 10 days after the notice is received. The public announcement of such criteria, as a minimum, shall include the following:

(1) A letter or notice distributed on or about the beginning of each school year, to the parents of children in attendance at school. The letter or notice shall contain the following information:

(i) In schools participating in a meal service program, the eligibility criteria for *reduced price* benefits with an explanation that households with incomes less than or equal to the reduced price criteria would be eligible for either free or reduced price meals, or in schools participating in the free

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milk option, the eligibility criteria for *free* milk benefits;

(ii) How a household may make application for free or reduced price meals or for free milk for its children;

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete documentation of eligibility information including names of all household members, social security numbers of all adult household members or an indication that a household member does not possess one, total household income and the amount and source of income received by each household member, and the signature of an adult household member;

(iv) An explanation that households currently receiving food stamps may submit their Food Stamp Program case number instead of income information;

(v) An explanation that the information on the application may be verified at any time during the school year;

(vi) An explanation that recipients of free and reduced price benefits must notify school officials during the school year of any decreases in household size, or increases in income of over $50 per month or $600 per year (or a lesser amount if established by the State);

(vii) How a household may apply for benefits at any time during the school year as circumstances change;

(viii) A statement to the effect that children having parents or guardians who become unemployed are eligible for free or reduced price meals or for free milk during the period of unemployment, *Provided,* that the loss of income causes the household income during the period of unemployment to be within the eligibility criteria;

(ix) A statement to the effect that in certain cases foster children are eligible for free or reduced price meals or free milk regardless of the income of the household with whom they reside and that households wishing to apply for such benefits for foster children should contact the School Food Authority;

(x) The statement: "In the operation of child feeding programs, no child will be discriminated against because of race, sex, color, national origin, age or handicap;" and

(xi) How a household may appeal the decision of the School Food Authority with respect to the application under the hearing procedure set forth in § 245.7. The letter or notice shall be accompanied by a copy of the application form required under § 245.6.

(2) On or about the beginning of each school year, a public release, containing the same information supplied to parents, and including both free and reduced prive eligibility criteria shall be provided to the informational media, the local unemployment office, and to any major employers contemplating large layoffs in the area from which the school draws its attendance.

(b) Copies of the public release shall be made available upon request to any interested persons. Any subsequent changes in a school's eligibility criteria during the school year shall be publicly announced in the same manner as the original criteria were announced.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-880 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, 31853, July 23, 1982; Amdt. 24, 48 FR 19355, Apr. 29, 1983; 49 FR 26034, June 26, 1984]

§ 245.6 Application for free and reduced price meals and free milk.

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of a commodity only school shall provide supplies of a form for use by families in making application for free or reduced price meals or free milk for their children. The application shall be clear and simple in design and the information requested thereon shall be limited to that required to demonstrate that the family does, or does not, meet the eligibility criteria for free or reduced price meals, respectively, or for free milk, issued by the School Food Authority. The information requested in the application with respect to the current annual income of the household shall be limited to total household income and the income received by each member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income would include cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which would be available for payment of the price of a child's meals or milk. The application shall require applicants to provide total households income and the income received by each household member identified by source of income; and shall enable household receiving food stamps to provide their Food Stamp Program case number in lieu of income information. The application shall require applicants to provide the names of all household members, and the social security numbers of those household members 21 years of age or older or an indication that a household member does not possess one. The application shall also contain substantially the following statements:

(1) "Section 9 of the National School Lunch Act requires that in order for your child to be eligible for free or reduced price meals, you must provide the social security numbers of all adult members of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price benefits. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a Food Stamp Office to determine current receipt of food stamps, contacting the state employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in a loss or reduction of benefits, administrative claims or legal actions if incorrect information is reported." State agencies and School Food Authorities shall ensure that the notice complies with section 7 of Pub. L. 93-579 (Privacy Act of 1974); and

(2) "In certain cases foster children are eligible for free or reduced price meals or free milk regardless of your household income. If you have such children living with you and wish to apply for such meals or milk for them, please contact us." The application shall also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that school officials may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes. The application shall be signed by an adult member of the family. The application shall contain clear instructions with respect to the submission of the completed application to the official or officials designated by the School Food Authority to make eligibility determinations on its behalf. A family shall be permitted to file an application at any time during the school year.

(b) *Determination of eligibility.* School officials may seek verification of the information on the application. When a completed application furnished by a family indicates that the family meets the eligibility criteria for free and reduced price meals or free milk, the family shall be promptly notified and the children from that family shall be provided the benefits to which they are entitled.

(1) *Notice of denial.* When the application furnished by the family is not fully documented or does not meet the eligibility criteria for free or reduced price benefits, school officials shall promptly provide written notice to each family denied benefits. As a minimum, this notice shall include:

(i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application; (ii) notification of the right to appeal; (iii) instructions on how to appeal; and (iv) a statement reminding parents that they may reapply for free and reduced price benefits at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(2) *Appeals of denied benefits.* A family who wishes to appeal a denied application by the School Food Authority may do so as specified in § 245.7. However, prior to initiating the hearing procedure, the parent may request a conference to provide the opportunity for the parent and school officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The School Food Authority shall promptly schedule a fair hearing, if requested.

(c) After the letter to parents and the applications have been disseminated, the School Food Authority may determine, based on information available to it, that a child for whom an application has not been submitted meets the School Food Authority's eligibility criteria for free and reduced price meals or for free milk. In such a situation, the School Food Authority shall complete and file an application for such child setting forth the basis of determining the child's eligibility. When a School Food Authority has obtained a determination of individual family income and family-size data from other sources, it need not require the submission of an application for any child from a family whose income would qualify for free or reduced price meals or for free milk under the School Food Authority's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the School Food Authority to make eligibility determinations or certifications by categories or groups of children.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14957, June 7, 1973; Amdt. 6, 39 FR 30338, Aug. 22, 1974; Amdt. 9, 41 FR 26192, June 25, 1976; Amdt. 19, 45 FR 67287, Oct. 10, 1980; 47 FR 31853, July 23, 1982; 49 FR 26034, June 26, 1984]

§ 245.6a Verification requirements.

(a) *Verification requirement.* State agencies shall ensure that by December 15 of each School Year, School Food Authorities have selected and verified a sample of their approved free and reduced price applications in accordance with the conditions and procedures described in this section. Verification activity may begin at the start of the school year but the final required sample size shall be based on the number of approved applications on file as of October 31. Any extensions to these deadlines must be approved in writing by FNS. School Food Authorities are required to satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying a minimum of the lesser of 3 percent or 3,000 applications which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying a minimum of: the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1200 of the income eligibility limit for free or reduced price meals; plus the lesser of one half of 1 percent (.5%) or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. A State may require all School Food Authorities to perform either random or focused sampling. School Food Authorities may choose to verify up to 100 percent of all applications to improve program integrity. Any State may, with the written approval of FNS, assume responsibility for complying with the verification requirements of this part within any of its School Food Authorities. When assuming such responsibility, States may utilize alternate approaches to verification provided that such verification meets the requirements of this part.

(1) *Confirmation of income information.* Verification efforts shall not delay the approval of applications. A household must be approved if the application contains the four basic documentation factors as specified in § 245.2(a-3) and the household meets the income eligibility criteria for free or reduced price benefits. When written evidence or collateral contacts are the primary sources of information, the School Food Authority shall require the submission of income information for the most recent full month that is available. However, when using a system of records, the School Food Authority may choose a recent month to verify and the entire sample may be verified for the same month. Households which dispute the validity of income information acquired through systems of records shall be given the opportunity to produce more recent income information.

(2) *Notification of selection.* Households selected to provide verification shall be provided written notice that they have been selected for verification and that they are required, by such date as determined by the School Food Authority, to submit the requested verification information to confirm eligibility for free or reduced price benefits. Those households shall be informed of the type or types of information and/or documents acceptable to the school and the name and phone number of a school official who can assist in the verification effort. Selected households shall also be informed that if they are currently participating in the Food Stamp Program, they may submit proof of current eligibility for food stamp benefits in lieu of income information. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(3) *Food stamp recipients.* Verification of the eligibility of households who provide their Food Stamp Program case number on the application in lieu of income information shall be accomplished either by confirming with the local food stamp office that the household is currently receiving Food Stamp Program benefits *or* by obtaining from the household a copy of a current "Notice of Eligibility" for Food Stamp Program benefits or equivalent official documentation of current participation issued by the food stamp office. If it is not established that the household is currently receiving food stamp benefits, the procedures for adverse action specified at § 245.6a(e) shall be followed. The notification of forthcoming termination of benefits provided to such households shall include a request for income information and for written evidence which confirms household income to assist those households in establishing continued eligibility for free meal benefits.

(4) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for free or reduced price benefts shall be terminated in accordance with § 245.6a(e). Households which refuse to complete the verification process and which are consequently determined ineligible for such benefits shall be counted toward meeting the School Food Authority's required sample of verified households.

(5) *Exceptions from verification.* Verification efforts are not required in residential child care institutions; schools in which FNS has approved special cash assistance claims based on economic statistics regarding per capita income; or schools in which all children are served with no separate charge for food service and no special cash assistance is claimed. School Food Authorities in which all schools participate in the Special Assistance Certification and Reimbursement Alternatives specified in § 245.9 shall meet the verification requirement only in those years in which applications are taken for all children in attendance.

(b) *Sources of information.* Sources of information for verification may include written evidence, collateral contacts, and systems of records.

(1) *Written evidence.* Written evidence shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circum-

stances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the school may require collateral contacts.

(2) *Collateral contact.* Collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made by person or by phone. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. If the household refuses to choose one of these options, its eligibility shall be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Collateral contacts could include employers, social service agencies, and migrant agencies.

(3) *Agency records.* Agency records to which the State agency or School Food Authority may have access are not considered collateral contacts. Information concerning income or family size maintained by other government agencies to which the State agency, School Food Authority, or school can legally gain access may be used to confirm a household's income and family size. One possible source could be wage and benefit information maintained by the State employment agency, if that information is available. The use of any information derived from other agencies must be used with the applicable safeguards concerning disclosure.

(c) *Verification recordkeeping.* School Food Authorities verifying applications shall maintain on file for review a description of the verification to be accomplished beginning School Year 1983-84. The description shall include:

(1) A summary of the verification efforts including the techniques to be used; (2) the total number of applications on file by October 31; and (3) the percentage or number of applications verified.

(d) *Nondiscrimination.* The verification efforts shall be applied without regard to race, sex, color, national origin, age, or handicap.

(e) *Adverse action.* If verification activities fail to confirm eligibility for free or reduced price benefits or should the household fail to cooperate with verification efforts, the school or School Food Authority shall reduce or terminate benefits, as applicable, as follows: Ten days advance notification shall be provided to households that are to receive a reduction or termination of benefits, prior to the actual reduction or termination. The first day of the 10 day advance notice period shall be the day the notice is sent. The notice shall advise the household of:

(1) The change; (2) the reasons for the change; (3) notification of the right to appeal and when the appeal must be filed to ensure continued benefits while awaiting a hearing and decision; (4) instructions on how to appeal; and (5) the right to reapply at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[48 FR 12510, Mar. 25, 1983, as amended at 49 FR 26034, June 26, 1984]

§ 245.7 Hearing procedure for families and School Food Authorities.

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or the Special Milk Program or of a commodity only school shall establish a hearing procedure under which:

(1) A family can appeal from a decision made by the School Food Authority with respect to an application the family has made for free or reduced price meals or for free milk, and (2) the School Food Authority can challenge the continued eligibility of any child for a free or reduced price meal or for free milk. The hearing proce-

dure shall provide for both the family and the School Food Authority:

(i) A simple, publicly announced method to make an oral or written request for a hearing;

(ii) An opportunity to be assisted or represented by an attorney or other person;

(iii) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing;

(v) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(vi) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(viii) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(ix) That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing, which shall include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(xi) That the written record of each hearing shall be preserved for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(b) *Continuation of benefits.* When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing and decision:

(1) Households that have been approved for benefits and that are subject to a reduction or termination of benefits later in the same school year shall receive continued benefits if they appeal the adverse action within the 10 day advance notice period; and

(2) Households that are denied benefits upon application shall not receive benefits.

(44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[Amdt. 6, 39 FR 30339, Aug. 22, 1974, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

§ 245.8 Nondiscrimination practices for children eligible to receive free and reduced price meals and free milk.

School Food Authorities of schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of commodity only schools shall take all actions that are necessary to insure compliance with the following nondiscrimination practices for children eligible to receive free and reduced price meals or free milk:

(a) The names of the children shall not be published, posted or announced in any manner;

(b) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means;

(c) The children shall not be required to work for their meals or milk;

(d) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance or consume their meals or milk at a different time;

(e) When more than one lunch or breakfast or type of milk is offered which meets the requirements prescribed in § 210.10, § 210.15a, § 220.8 or § 215.2(1) of this chapter, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

[Amdt. 6, 39 FR 30539, Aug. 22, 1974]

§ 245.9 Special assistance certification and reimbursement alternatives.

(a) A School Food Authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price meals may, at its option, authorize the school to reduce annual certification and public notification for those children eligible for *free meals* to once every two consecutive school years. This alternative shall be known as provision 1 and the following requirements shall apply:

(1) A School Food Authority of a school operating under provision 1 requirements shall publicly notify in accordance with § 245.5, parents of enrolled children who are receiving free meals once every two consecutive school years, and shall publicly notify in accordance with § 245.5, parents of all other enrolled children on an annual basis.

(2) The 80 percent enrollment eligibility for this alternative shall be based on the school's March enrollment data of the previous school year, or on other comparable data.

(3) A School Food Authority of a school operating under provision 1, shall count the number of free, reduced price and paid meals served to children in that school as the basis for monthly reimbursement claims.

(b) A School Food Authority of a school which serves all enrolled children in that school free meals may publicly notify and certify children in accordance with § 245.5 for free and reduced price meals for up to three consecutive school years; provided that eligibility determinations shall be in accordance with § 245.3, during the first school year. This alternative shall be known as provision 2 and the following requirements shall apply:

(1) Except for assistance properly made available under Parts 210, 220, 240, and 250 and by other legislation, a School Food Authority of a school operating under provision 2 requirements agrees to pay with funds from other than Federal sources for:

(i) Meals served to children not eligible, as determined by § 245.3, for free or reduced price meals, and

(ii) The differential between the per meal cost and Federal reimbursement received for each free or reduced price meal, respectively, served to children eligible to receive such meals under applicable program regulations.

(2) For the purpose of calculating reimbursement claims in the second and third consecutive school years the monthly meal counts of the actual number of meals served by type—free, reduced price, and paid—shall be converted each month to percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g. free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all meal types served in the second and third consecutive school years in order to calculate reimbursement claims for free, reduced price and paid meals each month.

(c) A School Food Authority shall submit a list of all schools participating in either provision 1 or provision 2 and the intitial year of implementation in their Free and Reduced Price Meal Policy Statement. This Statement shall include certification of meeting the eligibility requirements as set forth in paragraph (a) or (b) of this section.

(d) The School Food Authority upon request shall make documentation including enrollment data, participation data or other data available for monitoring purposes.

(e) A School Food Authority may return to standard notification and application procedures in the following school year if standard procedures better suit the school's program needs.

(f) Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with § 245.4, or may opt for these provisions provided the eligibility requirements as set forth in paragraphs (a) and (b) of this section are met.

(g) Schools currently operating under provision 1 or provision 2 of the Special Assistance interim rule published May 18, 1979 (44 FR 29027), may complete their second or third consecutive school year under the interim requirements, after which, § 245.9 shall be in effect. For all other schools, the final rule shall be effective upon publication.

(Sec. 9, Pub. L. 95-166, 91 Stat. 1336 (42 U.S.C. 1759a); secs. 805, and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773))

[Amdt. 19, 45 FR 67287, Oct. 10, 1980, as amended by Amdt. 23, 47 FR 14135, Apr. 2, 1982]

§ 245.10 Action by School Food Authorities.

(a) Each School Food Authority of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Such policy statement, as a minimum, shall contain the following:

(1) The official or officials designated by the school food authority to make eligibility determinations on its behalf for free and reduced price meals or for free milk;

(2) The family-size income guidelines to be used by schools under their jurisdiction in determining the eligibility of children for free and reduced price meals or for free milk in accordance with the provisions of § 245.3.

(3) The specific procedures the school food authority will use in accepting applications from families for free and reduced price meals or for free milk.

(4) A description of the method or methods to be used to collect payments from those children paying the full price of the meal or milk, or a reduced price of a meal, which will prevent the overt identification of the children receiving a free meal or free milk or a reduced price meal, and

(5) An assurance that the school will abide by the hearing procedure set forth in § 245.7 and the nondiscrimination practices set forth in § 245.8.

(b) The policy statement submitted by each school food authority shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.

(c) Each year, if a School Food Authority does not have its policy statement approved by the State agency, or FNSRO where applicable, by October 15, reimbursement shall be suspended for any meals or milk served until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Once the School Food Authority's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any School Food Authority to the State agency, or FNSRO where applicable, is determined to be not in compliance with the provisions of this part, the School Food Authority shall submit a policy statement that does meet the provisions within 30 days after notification by the State agency, or FNSRO where applicable.

(e) When revision of a School Food Authority's approved free and reduced price policy statement is necessitated because of a change in the family-size income standards of the State agency, or FNSRO where applicable, or because of other program changes, the School Food Authority shall have 60 days from the date the State agency announces the change in which to have its revised policy statement approved by the State agency, or FNSRO where applicable. In the event that a School Food Authority's proposed revised free and reduced price policy statement has not been submitted to, and approved by, the State agency, or FNSRO where applicable, within 60 days following the public announcement by the State agency, reimbursement shall be suspended for any meals or milk served after the end of the 60-day period. No commodities donated by the Department shall be used in any school after the end of the 60-day period, until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Reimbursement may be allowed at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension once the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

(Sec. 8, Pub. L 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Admt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

§ 245.11 Action by State agencies and FNSROs.

(a) Each State agency, or FNSRO where applicable, shall, for schools under its jurisdiction:

(1) Issue an annual prototype free and reduced price policy statement and any other instructions necessary to assure that School Food Authorities are fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents, the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in § 210.4(b); (2) prescribe and publicly announce by July 1 of each fiscal year, in accordance with § 245.3(a), family-size income standards which shall be applicable to all families, including welfare and other families receiving public assistance. Any standards prescribed by FNSRO with respect to nonprofit private schools shall be developed by FNSRO after consultation with the State agency.

(a-1) When a revision of the family-size income standards of the State agency, or FNSRO where applicable, is necessitated because of a change in the Secretary's income poverty guidelines or because of other program changes, the State agency shall publicly announce its revised family-size income standards no later than 30 days after the Secretary has announced such change.

(b) State agencies, and FNSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of § 245.5.

(c) Each State agency, or FNSRO where applicable, shall instruct School Food Authorities under their jurisdiction that they may not alter or amend the eligibility criteria set forth in an approved policy statement without advance approval of the State agency, or FNSRO where applicable.

(d) Not later than 10 days after the State agency, or FNSRO where applicable, announces its family-size income standards, it shall notify School Food Authorities in writing of any amendment to their free and reduced price policy statements necessary to bring the family-sized income criteria into conformance with the State agency's or FNSRO's family-size income standards.

(e) Except as provided in § 245.10, the State agency, or FNSRO where applicable, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department to any school unless the school food authority has an approved free and reduced price policy statement on file with the State Agency, or FNSRO where applicable.

(f) Each State agency, or FNSRO where applicable, shall, in the course of its supervisory assistance, review and evaluate the performance of School Food Authorities and of schools in fulfilling the requirements of this part, and shall advise School Food Authorities of any deficiencies found and any corrective action required to be taken.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1758, 1759(a), 1773, 1778))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 8, 40 FR 57208, Dec. 8, 1975; 44 FR 1364, Jan. 5, 1979; 46 FR 51368, Oct. 20, 1981; 48 FR 12511, Mar. 25, 1983]

§ 245.12 Fraud penalties.

(a) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall—

(1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years of both; or

(2) If such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(b) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (a) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[Amdt. 14, 44 FR 37901, June 29, 1979]

§ 245.13 Special responsibilities of State agencies.

(a) State agencies shall require School Food Authorities of schools selected for participation in the Department of Health, Education, and Welfare Public School Civil Rights Survey to gather information on the race and ethnic background of children for whom applications for free and reduced price meals are filed.

(b) To comply with the provisions of § 245.13(a) of this part, State agencies at their discretion may permit such School Food Authorities the option of requesting parents on application forms to voluntarily identify the race or ethnic background of their child for whom application is being made. Parents' provision of this information is purely voluntary and failure to provide this information will not affect the eligibility for benefits of the child for whom application is made. School Food Authorities shall develop alternative means of providing racial and ethnic data for applicants when such information is not voluntarily provided by parents on the application.

(c) School Food Authorities for such survey schools which are granted the option by the State agency and wish to request that the parents voluntarily identify the race or ethnic background of their children on the application form shall include the following statement on the letter to parents: "A survey is being conducted in your child's school to collect racial and ethnic data on applicants. This information is voluntary and will not affect your child's eligibility. This information is being collected to be sure everyone receives school meals on a fair basis, without regard to race, color, or national origin." Such schools shall also include the following statement on the application: "Please check in the space provided the racial or ethnic identity of your child(ren). This information is voluntary and will not affect your child's eligibility. This information is being collected only to be sure that everyone receives school meals on a fair basis, without regard to race, color, or national origin." Schools which provide for racial and ethnic identification data collection of applicants by means other than parental self-identification need not include the above statements on the application or parental letter.

(d) Participation in the survey shall not affect reimbursement or individual eligibility for program participation or benefits. The data collected shall be confidential and shall be used solely to determine the equitable distribution of benefits without regard to race, color, or national origin.

(Sec. 602, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d-1))

[45 FR 1000, Jan. 4, 1980]

§ 245.14 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
245.3 (a), (b)	0584-0026
245.4	0584-0026
245.5 (a), (b)	0584-0026
245.6 (a), (b), (c), (e)	0584-0026
245.7(a)	0584-0026
245.9 (a), (b), (c)	0584-0026
245.10 (a), (d), (e)	0584-0026
245.11 (a), (a-1), (b), (c), (d), (f)	0584-0026
245.13(a)-(c)	0584-0026

[50 FR 53258, Dec. 31, 1985]

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

Subpart A—General

Sec.
246.1 General purpose and scope.
246.2 Definitions.
246.3 Administration.

Subpart B—State and Local Agency Eligibility

246.4 State Plan.
246.5 Selection of local agencies.
246.6 Agreements with local agencies.

Subpart C—Participant Eligibility

246.7 Certification of participants.
246.8 Nondiscrimination.
246.9 Fair hearing procedures for participants.

Sec.

Subpart D—Participant Benefits

246.10 Supplemental foods.
246.11 Nutrition education.

Subpart E—State Agency Provisions

246.12 Food delivery systems.
246.13 Financial management system.
246.14 Program costs.
246.15 Program income other than grants.
246.16 Distribution of funds.
246.17 Closeout procedures.
246.18 Administrative appeal of State agency decisions.

Subpart F—Monitoring and Review

246.19 Management evaluation and reviews.
246.20 Audits.
246.21 Investigations.

Subpart G—Miscellaneous Provisions

246.22 Administrative appeal of FNS decisions.
246.23 Claims and penalties.
246.24 Procurement and property management.
246.25 Records and reports.
246.26 Other provisions.
246.27 Program information.
246.28 OMB control numbers.

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SOURCE: 50 FR 6121, Feb. 13, 1985, unless otherwise noted.

Subpart A—General

§ 246.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the Special Supplemental Food Program for Women, Infants and Children (WIC Program). Section 17 of the Child Nutrition Act of 1966, as amended, states in part that the Congress finds that substantial numbers of pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the Program is to provide supplemental foods and nutrition education through payment of cash grants to State agencies which administer the Program through local agencies at no cost to eligible persons. The Program shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems and to improve the health status of these persons.

§ 246.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

"*Administrative and program services costs*" means those direct and indirect costs, exclusive of food costs, as defined in § 246.14(c), which State and local agencies determine to be necessary to support Program operations. Administrative and program services costs include, but are not limited to, the costs of Program administration, start-up, monitoring, auditing, the development of and accountability for food delivery systems, nutrition education, outreach, certification, and developing and printing food instruments.

"*Affirmative Action Plan*" means that portion of the State Plan which describes how the Program will be initiated and expanded within the State's jurisdiction in accordance with § 246.4(a).

"*A-90*" means Office of Management and Budget Circular A-90, which provides guidance for the coordinated development and operation of information systems.

"*Breastfeeding women*" means women up to one year postpartum who are breastfeeding their infants.

"*Categorical eligibility*" means persons who meet the definitions of pregnant women, breastfeeding women, postpartum women, or infants or children.

"*Certification*" means the implementation of criteria and procedures to assess and document each applicant's eligibility for the Program.

"*Children*" means persons who have had their first birthday but have not yet attained their fifth birthday.

"*Clinic*" means a facility where applicants are certified.

"*Competent professional authority*" means an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the State agency may authorize to serve as a competent professional authority: Physicians, nutritionists (bachelor's or master's degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis in Nutrition), dietitians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. This definition also applies to an individual who is not on the staff of the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on the staff of the local agency.

"*CSFP*" means the Commodity Supplemental Food Program administered by the Department, authorized by section 5 of the Agriculture and Consumer Protection Act of 1973, as amended, and governed by Part 247 of this title.

"*Days*" means calendar days.

"*Department*" means the U.S. Department of Agriculture.

"*Disqualification*" means the act of ending the Program participation of a participant, authorized food vendor, or authorized State or local agency, whether as a punitive sanction or for administrative reasons.

"*Dual participation*" means simultaneous participation in the Program in one or more than one WIC clinic, or participation in the Program and in the CSFP during the same period of time.

"*Family*" means a group of related or nonrelated individuals who are not residents of an institution but who are living together as one economic unit.

"*Fiscal year*" means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"*FNS*" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"*Food costs*" means the costs of supplemental foods, determined in accordance with § 246.14(b).

"*Food delivery system*" means the method used by State and local agencies to provide supplemental foods to participants.

"*Food instrument*" means a voucher, check, coupon or other document which is used by a participant to obtain supplemental foods.

"*Health services*" means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

"*IHS*" means the Indian Health Service of the U.S. Department of Health and Human Services.

"*Infants*" means persons under one year of age.

"*Local agency*" means: (a) A public or private, nonprofit health or human service agency which provides health services, either directly or through contract, in accordance with § 246.5; (b) an IHS service unit; (c) an Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an IHS service unit; or (d) an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit.

"*Members of populations*" means persons with a common special need who do not necessarily reside in a specific geographic area, such as off-reservation Indians or migrant farmworkers and their families.

"*Migrant farmworker*" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode.

"*Nonprofit agency*" means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

"*Nutrition education*" means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"*Nutritional risk*" means: (a) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

"*OIG*" means the Department's Office of the Inspector General.

"*Participants*" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments under the Program.

"*Participation*" means the number of persons who have received supplemental foods or food instruments during the reporting period.

"*Postpartum women*" means women up to six months after termination of pregnancy.

"*Poverty income guidelines*" means the poverty income guidelines prescribed by the Department of Health and Human Services. These guidelines are adjusted annually by the Department of Health and Human Services, with each annual adjustment effective July 1 of each year. The poverty income guidelines prescribed by the Department of Health and Human Services shall be used for all States, as defined in this section, except for Alaska and Hawaii. Separate poverty income guidelines are prescribed for Alaska and Hawaii.

"*Pregnant women*" means women determined to have one or more embryos or fetuses in utero.

"*Program*" means the Special Supplemental Food Program for Women, Infants and Children (WIC) authorized by section 17 of the Child Nutrition Act of 1966, as amended.

"*Secretary*" means the Secretary of Agriculture.

"*SFPD*" means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

"*7 CFR Part 3015*" means the Department's Uniform Federal Assistance Regulations. Part 3015 implements the policies established by the Office of Management and Budget (OMB) in Circulars A-21, A-87, A-102, A-110, and A-122, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and the Trust Territory of the Pacific Islands.

"*State agency*" means the health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the IHS.

"*State Plan*" means a plan of Program operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction in accordance with § 246.4.

"*Supplemental foods*" means those foods containing nutrients determined to be beneficial for pregnant, breastfeeding, and postpartum women, infants and children, as prescribed by the Secretary in § 246.10.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

§ 246.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, SFPD and the Regional Offices are responsible for Program administration. FNS shall provide assistance to State and local agencies and evaluate all levels of Program operations to ensure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part, the Department's regulations governing nondiscrimination (7 CFR Parts 15, 15a and 15b), the Department's regulations governing the administration of grants (7 CFR Part 3015), Office of Management and Budget Circular A-90, FNS guidelines, and instructions issued under the FNS Directives Management System. The State agency shall provide guidance to local agencies on all aspects of Program operations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to administer an efficient and effective Program including, but not limited to, the functions of nutrition education, certification, food delivery, fiscal reporting, monitoring, and training. Based on the June participation of the previous fiscal year, each State agency, as a minimum, shall employ the following staff:

(1) A full-time or equivalent administrator when the monthly participation level exceeds 1,500, or a half-time or equivalent administrator when the monthly participation exceeds 500.

(2) At least one full-time or equivalent Program specialist for each 10,000 participants above 1,500, but the State agency need not employ more than eight Program specialists unless the State agency considers it necessary. Program specialists should be utilized for providing fiscal management and technical assistance, monitoring vendors, reviewing local agencies, training, and nutritional services, or other Program duties as assigned by the State agency.

(3) For nutrition-related services, one full-time or equivalent nutritionist when the monthly participation is above 1,500, or a half-time or equiva-

lent nutritionist when the monthly participation exceeds 500. The nutritionist shall be named State WIC Nutrition Coordinator and shall meet State personnel standards and qualifications in paragraphs (d)(3) (i), (ii), (iii), (iv), or (v) of this section and have the qualifications in paragraph (d)(3)(vi) of this section. Upon request, an exception to these qualifications may be granted by FNS. The State WIC Nutrition Coordinator shall—

(i) Hold a Master's degree with emphasis in food and nutrition, community nutrition, public health nutrition, nutrition education, human nutrition, nutrition science or equivalent and have at least two years responsible experience as a nutritionist in education, social service, maternal and child health, public health, nutrition, or dietetics; or

(ii) Be registered or eligible for registration with the American Dietetic Association and have at least two years experience; or

(iii) Have at least a Bachelor of Science or Bachelor of Arts degree, from an accredited four-year institution, with emphasis in food and nutrition, community nutrition, public health nutrition, nutrition education, human nutrition, nutrition science or equivalent and have at least three years of responsible experience as a nutritionist in education, social service, maternal and child health, public health nutrition, or dietetics; or

(iv) Be qualified as a Senior Public Health Nutritionist under the Department of Health and Human Services guidelines; or

(v) Meet the IHS standards for a Public Health Nutritionist; and

(vi) Have at least one of the following: Program development skills, education background and experience in the development of educational and training resource materials, community action experience, counseling skills or experience in participant advocacy.

(4) The State agency shall enforce hiring practices which comply with the nondiscrimination criteria set forth in § 246.8. The hiring of minority staff is encouraged.

(e) *Delegation to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part, the Department's regulations governing nondiscrimination (7 CFR Parts 15, 15a, 15b), the Department's regulations governing the administration of grants (7 CFR Part 3015), Office of Management and Budget Circular A-90, and State agency and FNS guidelines and instructions.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

Subpart B—State and Local Agency Eligibility

§ 246.4 State Plan.

(a) *Requirements.* By August 15 of each year, each State agency shall submit to FNS for approval a State Plan for the following fiscal year as a prerequisite to receiving funds under this section. The State agency may submit the State Plan in the format provided by FNS guidance. Alternatively, the State agency may submit the Plan in combination with other federally required planning documents or develop its own format, provided that the information required below is included. FNS requests advance notification that a State agency intends to use an alternative format. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete Plan, FNS will notify the State agency that additional information is needed to complete the Plan. Any disapproval will be accompanied by a statement of the reasons for the disapproval. Portions of the State Plan which do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. The Plan shall include:

(1) An outline of the State agency's goals and objectives for improving Program operations.

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(2) A budget for administrative funds, and an estimate of food expenditures.

(3) An estimate of Statewide participation for the coming fiscal year by category of women, infants and children.

(4) The State agency staffing pattern.

(5) An Affirmative Action Plan which includes—

(i) A list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency, the State agency's plans to initiate or expand operations under the Program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the Program and the availability of technical assistance in implementing the Program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage agencies to implement or expand operations under the Program within the following year in the neediest one-third of all areas unserved or partially served;

(ii) An estimate of the number of potentially eligible persons in each area and a list of the areas in the Affirmative Action Plan which are currently operating the Program and their current participation, which participant priority levels as specified in § 246.7 are being reached in each of these areas, and which areas in the Affirmative Action Plan are currently operating CSFP and their current participation; and

(iii) A list of the names and addresses of all local agencies.

(6) Plans to provide Program benefits to eligible migrant farmworkers and their families, and to Indians.

(7) The State agency's plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation and the location of local agencies operating in the Program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas.

(8) A description of how the State agency plans to coordinate Program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011 et seq.). Early and Periodic Screening, Diagnosis and Treatment Program (Title XIX of the Social Security Act), family planning, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, and child abuse counseling.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to meet the special nutrition education needs of migrant farmworkers and their families and Indians.

(10) For Indian State or local agencies that wish to apply for the alternate income determination procedure in accordance with § 246.7(c)(2)(vi), documentation that the majority of Indian household members have incomes below eligibility criteria.

(11) A copy of the procedure manual developed by the State agency for guidance to local agencies in operating the Program. The manual shall include—

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(d)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

(ii) Methods for providing nutrition education to participants;

(iii) Instructions concerning all food delivery operations performed at the local level; and

(iv) Instructions for providing all records and reports which the State agency requires local agencies to maintain and submit.

(12) A description of the State agency's financial management system.

(13) A description of how the State agency will distribute administrative funds, including start-up funds, to local agencies operating under the Program.

(14) A description of the food delivery system as it operates at the State agency level, including—

(i) All food delivery systems in use within the State agency's jurisdiction;

(ii) Vendor selection criteria;

(iii) A sample form for the written agreement between the food vendor and the State or local agency;

(iv) The system for monitoring food vendors to ensure compliance and prevent fraud, waste and abuse, and the State agency's plans for improvement in the coming year;

(v) Where food instruments are used, a facsimile of the food instrument, and the system for control and reconciliation of the food instruments;

(vi) The procedures used to pay food vendors; and

(vii) The names of companies, excluding authorized food vendors, with whom the State agency has contracted to participate in the operation of the food delivery system.

(15) Plans to prevent and detect dual participation. In States where the Program and the CSFP operate in the same area, or where an Indian State agency operates a Program in the same area as a geographic State agency, a copy of the written agreement between the State agencies for the detection and prevention of dual participation shall be submitted.

(16) A description of the procedures the State will use to comply with the civil rights requirements described in § 246.8, including the processing of discrimination complaints.

(17) A copy of the State agency's fair hearing procedures for participants and the administrative appeal procedures for local agencies and food vendors.

(b) *Hearings.* At least one month prior to submission of the State Plan to the designated State Plan clearance official, or submission to FNS in the case of an Indian State agency, the State agency shall conduct hearings to enable the general public to participate in the development of the State Plan.

(c) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit the amendments to FNS for approval. The amendments shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan.

(d) *Retention of copy.* A copy of the approved State Plan or the WIC portion of the State's composite plan of operations shall be kept on file at the State agency for public inspection.

§ 246.5 Selection of local agencies.

(a) *General.* This section sets forth the procedures the State agency shall perform in the selection of local agencies and the expansion, reduction, and disqualification of local agencies already in operation. In making decisions to intitiate, continue, and discontinue the participation of local agencies, the State agency shall give consideration to the need for Program benefits as delineated in the Affirmative Action Plan.

(b) *Application of local agencies.* The State agency shall require each agency, including subdivisions of the State agency, which desires approval as a local agency, to submit a written local agency application. Within 15 days after receipt of an incomplete application, the State agency shall provide written notification to the applicant agency of the additional information needed. Within 30 days after receipt of a complete application, the State agency shall notify the applicant agency in writing of the approval or disapproval of its application. When an application is disapproved, the State agency shall advise the applicant agency of the reasons for disapproval and of the right to appeal as set forth in § 246.18. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds available for Program initiation or expansion. The applicant agency shall be notified by the State agency when funds become available.

(c) *Program initiation and expansion.* The State agency shall meet the following requirements concerning Program initiation and expansion:

(1) The State agency shall fund local agencies serving those areas or special populations most in need first, in accordance with their order of priority as listed in the Affirmative Action Plan described in § 246.4(a)(5). The selection criteria cited in paragraph (d)(1) of this section shall be applied to each area or special population before eliminating that area from consideration and serving the next area of special population. The State agency shall consider the number of participants in each priority level being served by existing local agencies in determining when it is appropriate to move into additional areas in the Affirmative Action Plan or to expand existing operations in an area. Additionally, the State agency shall consider the total number of people potentially eligible in each area compared to the number being served. Expansion of existing operations shall be in accordance with the Affirmative Action Plan and may be based on the percentage of need being met in each participant priority level.

(2) The State agency shall provide a written justification to FNS for not funding an agency to serve the highest priority area or special population. Such justification may include its inability to administer the Program, lack of interest expressed for operating the Program, or for those areas or special populations which are under consideration for expansion of an existing operation, a determination by the State agency that there is a greater need for funding an agency serving an area or special population not operating the Program. The State agency shall use the participant priority system in § 246.7 as a measurement of greater need in such determination.

(3) The State agency may fund more than one local agency to serve the same area or special population as long as more than one local agency is necessary to serve the full extent of need in that area or special population.

(d) *Local agency priority system.* The State agency shall establish standards for the selection of new local agencies. Such standards shall include the following considerations:

(1) The State agency shall consider the following priority system, which is based on the relative availability of health and administrative services, in the selection of local agencies:

(i) First consideration shall be given to a public or a private nonprofit health agency that will provide ongoing, routine pediatric and obstetric care and administrative services.

(ii) Second consideration shall be given to a public or a private nonprofit health or human service agency that will enter into a written agreement with another agency for either ongoing, routine pediatric and obstetric care or administrative services.

(iii) Third consideration shall be given to a public or private nonprofit health agency that will enter into a written agreement with private physicians, licensed by the State, in order to provide ongoing, routine pediatric and obstetric care to a specific category of participants (women, infants or children).

(iv) Fourth consideration shall be given to a public or private nonprofit human service agency that will enter into a written agreement with private physicians, licensed by the State, to provide ongoing, routine pediatric and obstetric care.

(v) Fifth consideration shall be given to a public or private nonprofit health or human service agency that will provide ongoing, routine pediatric and obstetric care through referral to a health provider.

(2) When seeking new local agencies, the State agency shall publish a notice in the media of the area next in line according to the Affirmative Action Plan, unless the State agency has received an application from a public or nonprofit private health agency in that area which can provide adequate

health and administrative services. The notice shall include a brief explanation of the Program, a description of the local agency priority system cited in this paragraph and a request that potential local agencies notify the State agency of their interest. In addition, the State agency shall contact all potential local agencies in the area to ensure that they are aware of the opportunity to apply for participation under the Program. If no agency submits an application within 30 days, the State agency may then proceed with the selection of a local agency in the area next in line according to the Affirmative Action Plan. If sufficient funds are available, a State agency shall give notice and consider applications in more than one area at the same time but shall fund new local agencies in conformance with the sequential ranking of the Affirmative Action Plan.

(e) *Disqualification of local agencies.* (1) The State agency may disqualify a local agency—

(i) When the State agency determines noncompliance with Program regulations;

(ii) When the State's Program funds are insufficient to support the continued operation of all its existing local agencies at their current participation level; or

(iii) When the State agency determines, following a review of local agency credentials in accordance with paragraph (f) of this section, that another local agency can operate the Program more effectively and efficiently.

(2) The State agency may establish its own criteria for disqualification of local agencies. The State agency shall notify the local agency of any State-established criteria. In addition to any State established criteria, the State agency shall consider, at a minimum—

(i) The availability of other community resources to participants and the cost efficiency and cost effectiveness of the local agency in terms of both food and administrative and program services costs;

(ii) The percentages of participants in each priority level being served by the local agency and the percentage of need being met in each participant category;

(iii) The relative position of the area or special population served by the local agency in the Affirmative Action Plan;

(iv) The local agency's place in the priority system in paragraph (d)(1) of this section; and

(v) The capability of another local agency or agencies to accept the local agency's participants.

(3) When disqualifying a local agency under the Program, the State agency shall—

(i) Make every effort to transfer affected participants to another local agency without disruption of benefits;

(ii) Provide the affected local agency with written notice not less than 60 days in advance of the pending action which includes an explanation of the reasons for disqualification, the date of disqualification, and, except in cases of the expiration of a local agency's agreement, the local agency's right to appeal as set forth in § 246.18; and

(iii) Ensure that the action is not in conflict with any existing written agreements between the State and the local agency.

(f) *Periodic review of local agency qualifications.* The State agency may conduct periodic reviews of the qualifications of authorized local agencies under its jurisdiction. Based upon the results of such reviews the State agency may make appropriate adjustments among the participating local agencies, including the disqualification of a local agency when the State agency determines that another local agency can operate the Program more effectively and efficiently. In conducting such reviews, the State agency shall consider the factors listed in paragraph (e)(2) of this section in addition to whatever criteria it may develop. The State agency shall implement the procedures established in paragraph (e)(3) of this section when disqualifying a local agency.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

§ 246.6 Agreements with local agencies.

(a) *Signed written agreements.* The State agency shall enter into a signed written agreement with each local agency, including subdivisions of the State agency, which sets forth the local agency's responsibilities for Program operations as prescribed in this part. Copies of the agreement shall be kept on file at both the State and local agencies for purposes of review and audit in accordance with §§ 246.19 and 246.20. Neither the State agency nor the local agency has an obligation to renew the agreement. The expiration of an agreement is not subject to appeal. The State agency shall provide local agencies with advance written notice of the expiration of an agreement as required under §§ 246.5(e)(3)(ii) and 246.18(b)(1).

(b) *Provisions of agreement.* The agreement between the State agency and each local agency shall ensure that the local agency—

(1) Complies with all the fiscal and operational requirements prescribed by the State agency pursuant to this part, 7 CFR Part 3015, and FNS guidelines and instructions, and provides on a timely basis to the State agency all required information regarding fiscal and Program information;

(2) Has a competent professional authority on the staff of the local agency and the capabilities necessary to perform the certification procedures;

(3) Makes available appropriate health services to participants and informs applicants of the health services which are available;

(4) Has a plan for continued efforts to make health services available to participants at the clinic or through written agreements with health care providers when health services are provided through referral;

(5) Provides nutrition education services to participants, in compliance with § 246.11 and FNS guidelines and instructions;

(6) Implements a food delivery system prescribed by the State agency pursuant to § 246.12 and approved by FNS;

(7) Maintains complete, accurate, documented and current accounting of all Program funds received and expended;

(8) Maintains on file and has available for review, audit, and evaluation all criteria used for certification, including information on the area served, income standards used, and specific criteria used to determine nutritional risk; and

(9) Does not discriminate against persons on the grounds of race, color, national origin, age, sex or handicap; and compiles data, maintains records and submits reports as required to permit effective enforcement of the nondiscrimination laws.

(c) *Indian agencies.* Each Indian State agency shall ensure that all local agencies under its jurisdiction serve primarily Indian populations.

(d) *Health and human service agencies.* When a health agency and a human service agency comprise the local agency, both agencies shall together meet all the requirements of this part and shall enter into a written agreement which outlines all Program responsibilities of each agency. The agreement shall be approved by the State agency during the application process and shall be on file at both the State and local agency. No Program funds shall be used to reimburse the health agency for the health sevices provided. However, costs of certification borne by the health agency may be reimbursed.

(e) *Health or human service agencies and private physicians.* When a health or human service agency and private physician(s) comprise the local agency, all parties shall together meet all of the requirements of this part and shall enter into a written agreement which outlines the inter-related Program responsibilities between the physician(s) and the local agency. The agreement shall be approved by the State agency during the application process and shall be on file at both agencies. The local agency shall advise the State agency on its application of the name(s) and address(es) of the private physician(s) participating and obtain State agency approval of the written agreement. A competent professional authority on the staff of the health or human service agency shall be responsible for the certification of participants. No Program funds shall be used to reimburse the private physician(s) for the health services provided. However, costs of certification data provided by the physician(s) may be reimbursed.

Subpart C—Participant Eligibility

§ 246.7 Certification of participants.

(a) *Integration with health services.* To lend administrative efficiency and participant convenience to the certification process, whenever possible, Program intake procedures shall be combined with intake procedures for other health programs or services administered by the State and local agencies. Such merging may include verification procedures, certification interviews, and income computations.

(b) *Eligibility criteria.* To be certified as eligible for the Program, infants, children, and pregnant, postpartum, and breastfeeding women shall:

(1) In all State agencies except for Indian State agencies, meet the requirement that the applicant reside within the jurisdiction of the State. Indian State agencies may establish the requirement that applicants reside within their jurisdiction. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(2) Meet the income criteria specified in paragraph (c) of this section.

(3) Meet the nutritional risk criteria specified in paragraph (d) of this section.

(c) *Income criteria and income eligibility determination.* The State agency shall establish, and provide local agencies with, income guidelines, definitions, and procedures to be used in determining an applicant's income eligibility for the Program.

(1) The State agency may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming Program income guidelines to health care guidelines, the State agency shall not establish Program guidelines which exceed the guidelines for reduced-price school meals or are less than 100 percent of the revised poverty income guidelines issued annually by the Department of Health and Human Services.

(i) Different guidelines may be prescribed for different local agencies within the State provided that the guidelines are the ones used by the local agencies for determining eligibility for free or reduced-price health care.

(ii) On or before June 1 each year, FNS will announce adjustments in the income guidelines for reduced-price meals under section 9 of the National School Lunch Act, based on annual adjustments in the revised poverty income guidelines issued by the Department of Health and Human Services.

(iii) On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement new guidelines effective July 1 of each year for which such guidelines are issued by the State.

(2) The State agency shall ensure that local agencies determine income through the use of a clear and simple application form provided or approved by the State agency.

(i) In determining the income eligibility of an applicant, the State agency may instruct local agencies to consider the income of the family during the past 12 months and the family's current rate of income to determine which indicator more accurately reflects the family's status. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the State or local agency's income guidelines for Program eligibility.

(ii) If the State agency uses the National School Lunch reduced-priced meal income guidelines, as specified in paragraph (c)(1) of this section, it shall use the following definition of income: Income for the purposes of this part means gross cash income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following—

(A) Monetary compensation for services, including wages, salary, commissions, or fees;

(B) Net income from farm and nonfarm self-employment;

(C) Social Security benefits;

(D) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;

(E) Public assistance or welfare payments;

(F) Unemployment compensation;

(G) Government civilian employee or military retirement or pensions or veterans' payments;

(H) Private pensions or annuities;

(I) Alimony or child support payments;

(J) Regular contributions from persons not living in the household;

(K) Net royalties; and

(L) Other cash income. Other cash income includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(iii) If the State agency uses State or local free or reduced-price health care income guidelines, as it is authorized to do in paragraph (c)(1) of this section, it may use the State or local definition or definitions of income used for the health care eligibility determinations. The State agency shall ensure, however, that the State or local agency's definition of income does not count the value of in-kind housing and other in-kind benefits and payments or benefits listed in paragraph (c)(2)(iv) of this section as income for Program purposes and that families with gross income, as defined in paragraph (c)(2)(ii) of this section, in excess of 185 percent of the Federal guidelines specified under paragraph (c)(1) of this section are not rendered eligible for Program benefits.

(iv) In determining income eligibility, payments or benefits provided under certain Federal programs or acts are excluded from consideration as income by legislative prohibition. These programs include, but are not limited to—

(A) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, sec. 216, 42 U.S.C. 4636);

(B) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(C) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95-510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(D) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, sec. 6, 25 U.S.C. 459e);

(E) Payments received under the Job Training Partnership Act (Pub. L. 97-300, sec. 142(b), 29 U.S.C. 1552(b));

(F) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, sec. 6);

(G) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 94-204, sec. 4(a), 43 U.S.C. 1626);

(H) The value of assistance to children or their families under the National School Lunch Act (42 U.S.C. 1760(e)), the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), and the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(I) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433, sec. 2, 25 U.S.C. 609c-1); and

(J) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c)); and

(K) Payments or allowances received pursuant to the Home Energy Assistance Act of 1980 (Pub. L. 96-223, Title III, sec. 313(c)(1)).

(v) A State or local agency may require verification of information which it determines necessary to confirm income eligibility for Program benefits. The State agency may accept, as presumptive evidence of income within Program guidelines, verification of the applicant's participation in other State-administered programs which routinely verify income, such as Medicaid, public assistance programs or the Food Stamp Program; provided those programs have income eligibility guidelines at or below the State agency's Program income guidelines.

(vi) If an Indian State agency (or a non-Indian State agency which acts on behalf of a local agency operated by an Indian organization or the Indian Health Service) submits census data or other reliable documentation demonstrating to FNS that the majority of the Indian households in a local agency's service area have incomes at or below the State agency's income eligibility guidelines, FNS may authorize the State agency to approve the use of an income certification system under which the local Indian agency shall inform each Indian applicant household of the maximum family income allowed for that applicant's family size. The local agency shall ensure that the applicant, or the applicant's parent or caretaker, signs a statement that the applicant's family income does not exceed the maximum. The local agency may verify the income eligibility of any Indian applicant.

(vii) Instream migrant farmworkers and their family members with expired Verification of Certification cards shall be declared to satisfy the State agency's income standard; Provided, however, that the income of that instream migrant farmworker family is determined at least once every 12 months. Any determination that members of an instream migrant farmworker family have met the income standard, either in the migrant's home base area before the migrant has entered the stream for a particular agricultural season, or in an instream area during the agricultural season, shall satisfy the income criteria in any State for any subsequent certification while the migrant is instream during the 12-month period following the determination.

(d) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (b) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is a nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency.

(1) *Determination of nutritional risk.* At a minimum, height or length and weight shall be measured, and a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed. However, such hematological tests are not required for infants under six months of age. Height or length and weight measurements shall be obtained for all participants, including those who are at nutritional risk based solely on the established nutritional risk status of another person, as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section. At the State or local agency's discretion, the blood test is not required for children who were determined to be within the normal range at their last certification. However, the blood test shall be performed on such children at least once every 12 months.

(i) A breastfeeding woman may be determined to be a nutritional risk if her breastfed infant has been determined to be a nutritional risk. A breastfed infant can be certified based on the mother's medical and/or nutritional assessment. A breastfeeding mother and her infant shall be placed in the highest priority level for which either is qualified.

(ii) An infant under six months of age may be determined to be at nutritional risk if the infant's mother was a Program participant during pregnancy or of medical records document that the woman was at nutritional risk during pregnancy because of detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions.

(iii) A participant who has previously been certified eligible for the Program may be considered to be at nutritional risk in the next certification period if the competent professional authority determines there is a possibility of regression in nutritional status without the supplemental foods. The State agency may limit the number of times and circumstances under which a participant may be certified due to the possibility of regression.

(2) *Nutritional risk criteria.* The following are examples of nutritional risk conditions which may be used as a basis for certification. These examples include—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, such as anemia, underweight, overweight, abnormal patterns of weight gain in a pregnant woman, low birth weight in an infant, or stunting in an infant or child;

(ii) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in a pregnant woman, or failure to thrive in an infant;

(iii) Dietary deficiencies that impair or endanger health, such as inadequate dietary patterns assessed by a 24-hour dietary recall, dietary history, or food frequency checklist; and

(iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before 16 months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcholol or drug abuse histories or mental retardation.

(3) *Nutritional risk priorities.* In determining nutritional risk, the State agency shall develop and include in its State Plan, specific risk conditions by priority level with indices for identifying these conditions. The criteria shall be used statewide and in accordance with the priority system as set forth in paragraph (d)(4) of this section.

(4) *Nutritional risk priority system.* The competent professional authority shall fill vacancies which occur after a local agency has reached its maximum participation level by applying the following participant priority system to persons on the local agency's waiting list. Priorities I through VI shall be utilized in all States. The State agency may, at its discretion, expand the priority system to include Priority VII. The State agency may set income or other sub-priority levels within any of these seven priority levels. The State agency may expand Priority III, IV, or V to include high-risk postpartum women.

(i) *Priority I.* Pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for supplemental foods.

(ii) *Priority II.* Except those infants who qualify for Priority I, infant up to six months of age of Program participants who participated during pregnancy, and infants up to six months of age born of women who were not Program participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrated the person's need for supplemental foods.

(iii) *Priority III.* Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

(iv) *Priority IV.* Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

(v) *Priority V.* Children at nutritional risk because of an inadequate dietary pattern.

(vi) *Priority VI.* Postpartum women at nutritional risk.

(vii) *Priority VII (State agency option).* In accordance with the provisions of paragraph (d)(1)(iii) of this section, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

(e) *Processing standards.* The local agencies shall process applicants within the following timeframes:

(1) *Waiting lists.* When the local agency is serving its maximum caseload, the local agency shall maintain a waiting list of individuals who visit the local agency to express interest in receiving Program benefits and who are likely to be served. However, in no case shall an applicant who requests placement on the waiting list be denied inclusion. State agencies may establish a policy which permits or requires local agencies to accept telephone requests for placement on the waiting list. The waiting list shall include the person's name, address or phone number, status (e.g., pregnant, breastfeeding, age of applicant), and the date he or she was placed on the waiting list. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits. For those State agencies establishing procedures to accept telephone requests for placement on a waiting list, individuals shall be notified of their placement on a waiting list within 20 days after contacting the local agency by phone. The competent professional authority shall apply the participant priority system as specified in paragraph (d)(4) of this section to the waiting list to ensure that the highest priority persons become Program participants first when caseload slots become available.

(2) *Timeframes for processing applicants.* (i) When the local agency is not serving its maximum caseload, the local agency shall accept applications, make eligibility determinations, notify the applicants of the decisions made and, if the applicants are to be enrolled, issue food or food instruments. All of these actions shall be accomplished within the timeframes set forth below.

(ii) The processing timeframes shall begin when the individual visits the local agency during clinic office hours to make an oral or written request for Program benefits. To ensure that accurate records are kept of the date of such requests, the local agency shall, at the time of each request, record the applicant's name, address and the date. The remainder of the information necessary to determine eligibility shall be obtained by the time of certification. Medical data taken prior to certification may be used as provided in paragraph (f)(4) of this section.

(iii) The local agency shall act on applications within the following timeframes:

(A) Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for Program benefits; except that State agencies may provide an extension of the notification period to a maximum of 15 days for those local agencies which make written request, including a justification of the need for an extension. The State agency shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as Priority I participants, and migrant farmworkers and their family members who soon plan to leave the jurisdiction of the local agency.

(B) All other applicants shall be notified of their eligibility or ineligibility within 20 days of the date of the first request for Program benefits.

(iv) Each local agency using a retail purchase system shall issue a food instrument(s) to the participant at the same time as notification of certification. Such food instrument(s) shall provide benefits for the current month or the remaining portion thereof and shall be redeemable immediately upon receipt by the participant. Local agencies may mail the initial food instrument(s) with the notification of certification to those participants who meet the criteria for the receipt of food instruments through the mail, as provided in § 246.12(s)(8) (i) and (ii).

(v) Each local agency with a direct distribution or home delivery system shall issue the supplemental foods to the participant within 10 days of issuing the notification of certification.

(f) *Certification periods.* (1) Program benefits shall be based upon certifications established in accordance with the following timeframes:

(i) Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

(ii) Postpartum women shall be certified for up to six months postpartum.

(iii) Breastfeeding women shall be certified at intervals of approximately six months and ending with the breastfed infant's first birthday.

(iv) Infants shall be certified at intervals of approximately six months, except that the State agency may permit local agencies under its jurisdiction to certify infants under six months of age for a period extending up to the first birthday provided the quality and accessibility of health care services are not diminished.

(v) Children shall be certified at intervals of approximately six months and ending with the end of the month in which a child reaches the fifth birthday.

(2) The State agency may authorize local agencies under its jurisdiction to establish shorter certification periods than outlined in paragraph (f)(1) of this section on a case-by-case basis. If the State agency exercises this option, it shall issue guidance for use by local agencies in establishing the shorter periods.

(3) In cases where there is difficulty in appointment scheduling for persons referenced in paragraphs (f)(1) (iii), (iv) and (v) of this section, the certification period may be shortened or extended by a period not to exceed 30 days.

(4) If the nutritional risk determination is based on data taken before the time of entrance into the Program, the certification intervals for participants other than pregnant women shall be based on the date when the data were taken rather than the date of admittance to the Program. All data used to determine nutritional risk shall be reflective of the applicant's categorical status at the time of certification.

(g) *Actions affecting participation in mid-certification.* (1) The State agency shall ensure that local agencies disqualify an individual in the middle of a certification period if, on the basis of a reassessment of Program eligibility status, the individual is determined ineligible. The State agency may authorize local agencies to disqualify an individual in the middle of a certification period for the following reasons—

(i) Participant abuse, including, but not limited to the infractions listed in § 246.12(k)(2); or

(ii) Failure to pick up his or her food instruments or supplemental foods for a number of consecutive months, as specified by the State agency.

(2) If a State agency experiences funding shortages, it may be necessary to discontinue Program benefits to a number of certified participants. Such action may be taken only after the State agency has explored alternative actions. If taken, the action should affect the least possible number of participants and should affect participants whose nutritional and health status would be least impaired by withdrawal of Program benefits. The State may discontinue benefits by—

(i) Disqualifying a group of participants; and/or

(ii) Withholding benefits of a group with the expectation of providing benefits again when funds are available.

(3) When a State agency elects to discontinue benefits to a number of certified participants due to insufficient funds for a period of time, it shall not enroll new participants during that period.

(h) *Certification forms.* All certification data for each person certified shall be recorded on a form (or forms) which are provided by the State agency. The information on the forms shall include—

(1) Name and address;

(2) Date of initial visit to apply for participation;

(3) Information regarding income eligibility for the Program as specified in paragraph (c) of this section;

(4) The date of certification and the date nutritional risk data were taken if different from the date of certification;

(5) Height or length, weight, and hematological test results;

(6) The specific nutritional risk conditions which established eligibility for the supplemental foods. Documentation should include health history when appropriate to the nutritional risk condition, with the applicant's or applicant's parent's or caretaker's consent;

(7) The signature and title of the competent professional authority making the nutritional risk determination, and, if different, the signature and title of the administrative person responsible for determining income eligibility under the Program; and

(8) The following statement with a space for the signature of the applicant, parent, or caretaker to sign after reading or being read the following statement:

> I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being made in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that deliberate misrepresentation may subject me to civil or criminal prosecution under State and Federal law.

(i) *Notification of participant rights and responsibilities.* In order to inform applicants and participants or their parents or caretakers of Program rights and responsibilities, the following information shall be provided. Where a significant number or proportion of the population eligible to be served needs the information in a language other than English, reasonable steps shall be taken to provide the information in appropriate languages to such persons, considering the scope of the Program and the size and concentration of such population.

(1) During the certification procedure, every Program applicant, parent or caretaker shall be informed of the illegality of dual participation.

(2) At the time of certification, each Program participant, parent or caretaker shall read, or have read to him or her, the statement provided in paragraph (h)(8) of this section and the following sentences:

(i) "Standards for eligibility and participation in the WIC Program are the same for everyone, regardless of race, color, national origin, age, handicap, or sex."

(ii) "You may appeal any decision made by the local agency regarding your eligibility for the Program."

(iii) "The local agency will make health services and nutrition education available to you, and you are encouraged to participate in these services."

(3) If the State agency implements the policy of disqualifying a participant for not picking up supplemental foods or food instruments in accordance with paragraph (g)(1)(ii) of this section, it shall provide notice of this policy and of the importance of regularly picking up food instruments or supplemental foods to each participant, parent or caretaker at the time of each certification.

(4) At least during the initial certification visit, each participant, parent or caretaker shall receive an explanation of how the local food delivery system operates and shall be advised of the types of health services available, where they are located, how they may be obtained and why they may be useful.

(5) Persons found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(6) A person who is about to be disqualified from Program participation at any time during the certification period shall be advised in writing not less than 15 days before the disqualification, of the reasons for this action, and of the right to a fair hearing. Such notification need not be provided to persons who will be disqualified for not picking up supplemental foods or food instruments in accordance with paragraph (g)(1)(ii) of this section.

(7) Each participant, parent or caretaker shall be notified not less than 15 days before the expiration of each certification period that certification for the Program is about to expire.

(j) *Transfer of certification.* (1) Each State agency shall ensure issuance of a Verification of Certification card to every participant who is a member of a family in which there is a migrant farmworker or any other participant who is likely to be relocating during the certification period. Certifying local agencies shall ensure that Verification of Certification cards are fully completed.

(2) The State agency shall require the receiving local agency to accept Verification of Certification cards from participants, including participants who are migrant farmworkers or members of their families, who have been participating in the Program in another local agency within or outside of the jurisdiction of the State agency. A person with a valid Verification of Certification card shall not be denied participation in the receiving State because the person does not meet that State's particular eligibility criteria.

(3) The Verification of Certification card is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. If the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants.

(4) The Verification of Certification card shall include the name of the participant, the date the certification was performed, the date income eligibility was last determined, the nutritional risk condition of the participant, the date the certification period expires, the signature and printed or typed name of the certifying local agency official, the name and address of the certifying local agency and an identification number or some other means of accountability. The Verification of Certification card shall be uniform throughout the jurisdiction of the State agency.

(k) *Dual participation.* (1) The State agency shall be responsible for the following:

(i) In conjunction with the local agency, the prevention and detection of dual participation within each local agency and between local agencies.

(ii) In areas where local agency serves the same population as an Indian State agency or a CSFP agency, entering into an agreement with the CSFP or Indian State agency for the detection and prevention of dual participation. The agreement must be made prior to operation within the same area and must be in writing.

(iii) Immediate disqualification from one of the programs or clinics for participants found in violation due to dual participation. Where deliberate misrepresentation is involved, the participant may be disqualifed from participation in both programs or clinics as specified in § 246.12(k)(2).

(2) At certification, and when issuing food or food instruments, the local agency shall check the identification of each participant. For an infant or child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate to establish identity, shall be acceptable.

(l) *Certification without charge.* The certification procedure shall be performed at no cost to the applicant.

§ 246.8 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR Parts 15, 15a and 15b), and FNS instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program. Compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(1) Notification to the public of the nondiscrimination policy and complaint rights of participants and potentially eligible persons;

(2) Review and monitoring activity to ensure Program compliance with the nondiscrimination laws and regulations;

(3) Collection and reporting of racial and ethnic participation data as required by Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs on the basis of race, color, or national origin; and

(4) Establishment of grievance procedures for handling complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, D.C. 20250 or with the Office established by the State agency to handle discrimination grievances or complaints. All complaints received by State or local agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or Director, Office of Equal Opportunity. A State or local agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

(c) *Non-English materials.* Where a significant number or proportion of the population eligible to be served needs service or information in a language other than English in order effectively to be informed of or to participate in the Program, the State agency shall take reasonable steps considering the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to required Program information except certification forms which are used only by local agency staff. The State agency shall also ensure that all rights and responsibilities listed on the certification form are read to these applicants in the appropriate language.

§ 246.9 Fair hearing procedures for participants.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the individual's denial of participation or disqualification from the Program.

(b) *Hearing system.* The State agency shall provide for either a hearing at the State level or a hearing at the local level which permits the individual to appeal a local agency decision to the State agency. The State agency may adopt local level hearings in some areas, such as those with large caseloads, and maintain only State level hearings in other areas.

(c) *Notification of appeal rights.* At the time of participation denial or of disqualification from the Program, the State or local agency shall inform each individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(d) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(e) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings; provided that, such time limit is not less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action.

(f) *Denial or dismissal of request.* The State and local agencies shall not deny or dismiss a request for a hearing unless—

(1) The request is not received within the time limit set by the State

agency in accordance with paragraph (e) of this section;

(2) The request is withdrawn in writing by the appellant or a representative of the appellant;

(3) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

(4) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

(g) *Continuation of benefits.* Except for participants whose certification period has expired, participants who appeal the termination of benefits within the 15 days advance adverse notice period provided by § 246.7(i)(6) shall continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive benefits while awaiting the hearing.

(h) *Rules of procedure.* State and local agencies shall process each request for a hearing under uniform rules of procedure and shall makes these rules of procedure available for public inspection and copying. At a minimum, such rules shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the appellant. The procedures shall not be unduly complex or legalistic.

(i) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall—

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the State agency; and

(6) Render a hearing decision which will resolve the dispute.

(j) *Conduct of the hearing.* The State or lcoal agency shall ensure that the hearing is accessible to the appellant and is held within three weeks from the date the State or local agency received the request for a hearing. The State or local agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice. The State or local agency shall also provide the appellant or representative an opportunity to—

(1) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Advance arguments without undue interference;

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(k) *Fair hearing decisions.* (1) Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by hearing official. The State or local agency shall retain the hearing record in accordance with § 246.25 and make these records available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) The decision by the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.

(3) Within 45 days of the receipt of the request for the hearing, the State or local agency shall notify the appellant or representative in writing of the decision and the reasons for the decision in accordance with paragraph (k)(2) of this section. If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official. The appellant may appeal a local hearing decision to the State agency, provided that the request for appeal is made within 15 days of the mailing date of the hearing decision notice. The appellant shall not continue to receive benefits while an appeal to the State agency of a decision rendered on appeal at the local level is pending. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.

(4) The State and local agency shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.

(l) *Judicial review.* If a State level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

Subpart D—Participant Benefits

§ 246.10 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants.

(b) *State agency responsibilities.* State agencies shall—

(1) Identify foods which are acceptable for use under the Program in accordance with the requirements of this section and provide to local agencies a list of acceptable foods and their maximum monthly quantities as specified in paragraph (c) of this section; and

(2) Ensure that local agencies—

(i) Make available at least one food from each group in each food package listed in paragraph (c) of this section. However, this does not mean that the local agency must provide each participant with a food from each food group;

(ii) Make available to participants the supplemental foods, as authorized in paragraph (c) of this section; and

(iii) Designate a competent professional authority to prescribe types of supplemental foods in quantities appropriate for each participant, taking into consideration the participant's age and dietary needs. The amounts of supplemental foods shall not exceed the maximum quantities specified in this section.

(c) *Food packages.* There are six food packages available under the Program which may be provided to participants. The authorized supplemental foods shall be prescribed from food packages according to the category and nutritional need of the participant. The food packages are as follows:

NOTE: The metric units given are mathematical conversions. If packaging practices change, the authorized food quantities will be revised accordingly.

(1) *Food Package I—Infants 0 Through 3 Months.* (i) Iron-fortified infant formula, which is a complete formula not requiring the addition of any ingredients other than water prior to being served in a liquid state, and which contains at least 10 milligrams of iron per liter of formula at standard

dilution which supplies 67 kilocalories per milliliters; i.e., approximately 20 kilocalories per fluid ounce of formula at standard dilution. Formulas which do not meet these requirements are authorized when a physician determines that the infant has a medical condition which contraindicates the use of infant formula as described above including, but not limited to, medical conditions which contraindicate the use of iron-fortified formula, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes, and allergies. Low-calorie formulas are not authorized solely for the purpose of managing body weight of infants. Documentation of the physician's determination of the need for a formula which does not meet the requirements described above the specific formula prescribed shall be included in the participant's certification file. Concentrated liquid or powdered formula shall be provided, except that, ready-to-feed formula may be authorized when the competent professional authority determines and documents that there is an unsanitary or restricted water supply, that there is poor refrigeration or that the person who is caring for an infant may have difficulty in correctly diluting concentrated liquid or powdered formula.

(ii) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Formula:	
Concentrated liquid formula.	403 fluid oz. (11.9 L).
or	
Powdered formula	May be substituted at the rate of 8 lbs. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula.
or	
Ready-to-feed formula.	May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula.

(2) *Food Package II—Infants 4 through 12 Months.* (i) Formula as specified in paragraph (c)(1)(i) of this section.

(ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal.

(iii) Single strength fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice; or infant juice which contains a minimum of 30 milligrams of vitamin C per 100 milliliters. Issuance prior to the time when the infant can drink from a cup is discouraged. The competent professional authority shall instruct the participant's parent or guardian to feed the juice to the participant from a cup to prevent "bottle caries."

(iv) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Formula:	
Concentrated liquid formula.	403 fluid oz. (11.9 L).
or	
Powdered formula	May be substituted at the rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula.
or	
Ready-to-feed formula.	May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula.
Infant cereal	24 oz. dry (.7 kg).
Juice: [1]	
Single strength adult juice.	92 fluid oz. (2.7 L).
or	
Frozen concentrated juice.	96 fluid oz. reconstituted (2.8 L).
or	
Infant juice	May be substituted at the rate of 63 fluid oz. (1.9 L) of infant juice per 92 fluid oz. (2.7 L) of single strength adult juice.

[1] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume of juice does not exceed the amount specified for single strength juice.

(3) *Food Package III-Children/Women with Special Dietary Needs.* Children and women with special dietary needs may receive the following supplemental foods if the physician determines that the participant has a

medical condition which precludes or restricts the use of conventional foods and necessitates the use of a formula including, but not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndrome and allergies. The supplemental foods described below are not authorized solely for the purpose of enhancing nutrient intake or managing body weight of children and women participants. Documentation of the physician's determination of the need for a formula and the specific formula prescribed shall be included in the participant's certification file.

(i) Formula intended for use as an oral feeding and prescribed by a physican.

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitiamin C per 100 milliliters of reconstituted juice.

(iv) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and special dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Formula:	
Concentrated liquid formula.	403 fluid oz. (11.9 L).
Addition [1]	52 fluid oz. (1.5 L).
or	
Powdered formula	May be substituted at a rate of 8 lb. (3.6 kg) per 403 fluid oz. (11.9 L) of concentrated liquid formula.
Addition [1]	1 lb. (.4 kg).
or	
Ready-to-feed formula.	May be substituted at the rate of 26 fluid oz. (.8 L) per 13 fluid oz. (.4 L) of concentrated liquid formula.
Addition [1]	104 fluid oz. (3.1 L).
Cereal (hot or cold)	36 oz. dry (1 kg).
Juice: [2]	
Single strength juice.	138 fluid oz. (4.1 L).
or	
Frozen concentrated juice.	144 fluid oz. reconstituted (4.3 L).

[1] Additional formula may be issued on an individual basis provided the need is demonstrated and documented in the individual's certification file by the competent professional authority.

[2] Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(4) *Food Package IV—Children 1 to 5 Years.* (i) Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of

30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dry beans or peas, including but not limited to, lentils, black, navy, kidney, garbanzo, soy, pinto, and mung beans, crowder, cow, split and black-eyed peas.

(vi) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	24 qt. (22.7 L).
or	
Fluid skim or low fat milk.	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Evaporated whole milk.	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk.	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk.	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted. [1]
Eggs:	
Eggs	2 doz. or 2½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice: [2]	
Single strength juice.	276 fluid oz. (8.2 L).
or	
Frozen concentrated juice.	288 fluid oz. reconstituted (8.5 L).
Legumes:	
Dry beans or peas	1 lb. (.4 kg).
or	
Peanut butter	18 oz. (.5 kg).

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[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength and frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(5) *Food Package V-Pregnant and Breastfeeding Women.* (i) Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) Peanut butter or mature dry beans or peas, including but not limited to lentils, black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(vi) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	28 qt. (26.5 L).
or	
Fluid skim or lowfat milk.	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Evaporated whole milk.	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk.	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk.	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1]
Eggs:	
Eggs	2 doz. or 2½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice:[2]	
Single strength juice.	276 fluid oz. (8.2 L).
or	
Frozen, concentrated juice.	288 fluid oz. reconstituted (8.5 L).
Legumes:	
Dry beans or peas	1 lb. (.4 kg).
or	
Peanut butter	18 oz. (.5 kg).

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(6) *Food Package VI-Non-breastfeeding Postpartum Women.* (i) Pasteurized fluid whole milk which is unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.1 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per 1 ounce).

(iii) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(iv) Eggs or dried egg mix.

(v) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk	24 qt. (22.7 L)
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1]
Eggs:	
Eggs	2 doz. or 2½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs of 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereal (hot or cold)	36 oz. dry (1 kg).
Juice:[2]	
Single strength juice.	184 fluid oz. (5.4 L).
or	
Frozen concentrated juice.	192 fluid oz. reconstituted (5.7 L).

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

(d) *Use of commodity foods.* (1) At the request of a State agency, the Department will purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency shall be equivalent to the foods specified in paragraph (c) of this section.

(2) The State agency shall—

(i) Distribute the commodity foods to the local agency or participant;

(ii) Ensure satisfactory storage conditions for the commodity foods, including documentation of proper insurance; and

(iii) Ensure that there are proper storage facilities for commodity foods.

(e) *Substitute foods.* (1) The State agency may submit to FNS a plan for substitution of foods acceptable for use in the Program to allow for different cultural eating patterns. The plan shall include the State agency's justification for the proposed substitution, including a specific explanation of the cultural eating patterns which require the proposed substitution and other information necessary for FNS to evaluate the plan as specified in paragraph (e)(2) of this section.

(2) FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the three following criteria:

(i) Any proposed substitute food must be *nutritionally equivalent* or superior to the food it is intended to replace.

(ii) The proposed substitute must be widely *available* to participants in the areas where the substitute is intended to be used.

(iii) The *cost* of the substitute must be equivalent to or less than the cost of the food it is intended to replace.

(3) FNS will make a determination on the plan for substitution of foods for different cultural eating patterns based on the evaluation criteria specified in paragraph (e)(2) of this section and the State agency's justification for the substitution. The State agency shall use substitute foods only after receiving the written approval of FNS.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

§ 246.11 Nutrition education.

(a) *General.* (1) Nutrition education shall be considered a benefit of the Program, and shall be made available at no cost to the participant. Nutrition education shall be designed to be easily understood by participants, and it shall bear a practical relationship to participant nutritional needs, household situations, and cultural preferences including information on how to select food for themselves and their families. Nutrition education shall be thoroughly integrated into participant health care plans, the delivery of supplemental foods, and other Program operations.

(2) The State agency shall ensure that nutrition education is made available to all participants. Nutrition education may be provided through the local agencies directly, or through arrangements made with other agencies. At the time of certification, the local agency shall stress the positive, long-term benefits of nutrition education and encourage the participant to attend and participate in nutrition education activities. However, individual participants shall not be denied supplemental foods for failure to attend or participate in nutrition education activities.

(b) *Goals.* Nutrition education shall be designed to achieve the following two broad goals:

(1) Stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under five years of age.

(2) Assist the individual who is at nutritional risk in achieving a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition-related problems through optimal use of the supplemental foods and other nutritious foods. This is to be taught in the context of the ethnic, cultural and geographic preferences of the participants and with consideration for educational and environmental limitations experienced by the participants.

(c) *State agency responsibilities.* The State agency shall perform the following activities in carrying out nutrition education responsibilities:

(1) Develop and coordinate the nutrition education component of Program operations with consideration of local agency plans, needs and available nutrition education resources.

(2) Provide in-service training and technical assistance for professional and para-professional personnel involved in providing nutrition education to participants at local agencies.

(3) Identify or develop resources and educational materials for use in local agencies, taking reasonable steps to include materials in languages other than English in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population.

(4) Develop and implement procedures to ensure that nutrition education is offered to all adult participants and to parents and guardians of infant or child participants, as well as child participants, whenever possible.

(5) Annually perform and document evaluations of nutrition education activities. The evaluations shall include an assesment of participants' views concerning the effectiveness of the nutrition education which they received.

(6) Monitor local agency activities to ensure compliance with provisions set forth in paragraphs (d) and (e) of this section.

(7) Establish standards for participant contacts that ensure adequate nutrition education in accordance with paragraph (e) of this section.

(d) *Local agency responsibilities.* Local agencies shall perform the following activities in carrying out their nutrition education responsibilities:

(1) Make nutrition education available or enter into an agreement with another agency to make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and whenever possible, to child participants. Nutrition education may be provided through the use of individual or group sessions. Educational materials designed for Program participants may be utilized to provide education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than the program.

(2) Develop an annual local agency nutrition education plan consistent with the State's nutrition education component of Program operations and in accordance with this part and FNS guidelines. The local agency shall submit its nutrition education plan to the State agency by a date specified by the State agency.

(e) *Participant contacts.* (1) The nutrition education contacts shall be made available through individual or group sessions which are appropriate to the individual participant's nutritional needs. All pregnant participants shall be encouraged to breastfeed unless contraindicated for health reasons.

(2) During each six-month certification period, at least two nutrition contacts shall be made available to all adult participants and the parents or caretakers of infant and child participants, and wherever possible, the child participants themselves.

(3) Nutrition education contacts shall be made available at a quarterly rate, but not necessarily taking place within each quarter, to parents or caretakers of infant participants certified for a period in excess of six months.

(4) The local agency shall document in each participants's certification file the nutrition education given the participant in accordance with the State agency standards. Should a participant refuse or be unable to attend or participate in nutrition education, the local agency shall document this fact in the participant's file for purposes of further education efforts and for monitoring purposes.

(5) An individual care plan shall be provided for a participant based on the need for such plan as determined by the competent professional authority, except that any participant, parent, or caretaker shall receive such plan upon request.

(6) Contacts shall be designed to meet different cultural and language needs of Program participants.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

Subpart E—State Agency Provisions

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for State and local agency food delivery systems.

(1) The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

(2) The State agency shall design all food delivey systems to be used by local agencies under its jurisdiction.

(3) FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems shall be in conformance with the requirements of 7 CFR Part 3015.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems—retail purchase, home delivery or direct distribution. Each system shall be procedurally uniform within the jurisdiction of the State agency. When used, food instruments shall be uniform within each type of system.

(c) *Free of charge.* Participants shall receive the Program's supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency shall ensure that the food delivery system is compatible with delivery of health and nutrition education services to the participants.

(e) *Authorization of food vendors.* Only food vendors authorized by the State agency may redeem food intruments or otherwise provide supplemental foods to participants.

(1) There shall be a documented onsite visit prior to, or at the time of, initial authorization of a new vendor. However, vendors authorized prior to the date of State implementation of the amendment to Program regulations published at 47 FR 23626 need not have a documented visit.

(2) The State agency shall authorize an appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that State or local officials can effectively manage review of authorized food vendors in their jurisdiction. The State agency may establish criteria to limit the number of authorized food vendors in its jurisdiction.

(3) The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(f) *Food vendor agreements.* The State agency shall ensure that all participating food vendors enter into written contracts or agreements with the State or local agency. The food vendor contract or agreement shall be signed by a representative who has legal authority to obligate the food vendor. When the food vendor is obligating more than one outlet, all outlets shall be specified in the contract or agreement. When more than one outlet is specified in the contract or agreement, an individual outlet may be added or deleted without affecting the remainder of outlets. Neither the State or local agency nor the vendor has an obligation to renew the vendor contract or agreement. The State or local agency shall provide vendors with not less than 15 days advance written notice of the expiration of a contract or agreement.

(1) In the retail purchase system, a standard vendor contract or agreement shall be used statewide, though exceptions may be made with the approval of the State agency.

(2) The food vendor contract or agreement shall contain the following specifications, although the State agency may determine the exact wording to be used:

(i) In providing supplemental foods to the participants, the food vendor shall only provide the supplemental foods specified on the food instrument.

(ii) The food vendor shall provide supplemental foods at the current price or at less than the current price charged to other customers.

(iii) When food instruments are used, the food vendor shall submit those food instruments for payment within the allowed time period and accept food instruments from a participant only within the allowed time period.

(iv) The State agency has the right to demand refunds for charges of more than the actual purchase price for supplemental foods.

(v) The State agency may deny payment to the food vendor for improper food instruments or may demand refunds for payments already made on improper food instruments.

(vi) The food vendor shall not seek restitution from participants for food instruments not paid by the State or local agency.

(vii) The manager of the store or an authorized representative such as the head cashier shall agree to accept training on Program procedures.

(viii) The food vendor shall inform and train cashiers or other staff on Program requirements.

(ix) The food vendor shall be accountable for actions of employees in the utilization of food instruments or provision of supplemental foods.

(x) The food vendor shall offer Program participants the same courtesies as offered to other customers.

(xi) The food vendor may be monitored for compliance with Program rules.

(xii) During a monitoring visit of a retail vendor, the food vendor shall provide access to food instruments negotiated the day of the review at the request of the reviewer.

(xiii) Retail vendors shall provide access to shelf price records, if available.

(xiv) A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or local laws. Under § 246.23 of the regulations, those who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(xv) The food vendor shall comply with the nondiscrimination provisions of Departmental regulations (7 CFR Parts 15, 15a and 15b).

(xvi) Neither the State agency nor the food vendor has an obligation to renew the vendor contract or agreement.

(xvii) Either the State agency or the vendor may terminate the contract or agreement for cause after providing advance written notice, of a period of not less than 15 days to be specified by the State agency.

(xviii) The State agency may disqualify a food vendor for reasons of Program abuse. The vendor has the right to appeal a State agency decision pertaining to denial of application to participate, vendor disqualification or any other adverse action which affects participation during the contract or agreement performance period. Expiration of a contract or agreement with a food vendor is not subject to appeal.

(xix) The food vendor shall notify the State agency when the vendor ceases operations or ownership changes. The contract or agreement is null and void if the ownership changes.

(3) Other provisions shall be added to the contracts or agreements to implement State agency options in paragraphs (k)(1)(iii) and (s)(5)(iv) of this section.

(g) *Periodic review of food vendor qualifications.* The State agency shall conduct a periodic review of the qualifications of all authorized food vendors under its jurisdiction, at least once every two years. The State agency shall establish criteria used to assess the adequacy of all food vendor qualifications. Based upon the results of such reviews the State agency shall make appropriate adjustments among the participating food vendors, such as termination of agreements.

(h) *Food vendor training and guidelines.* The State agency shall ensure that training is provided by the State or local agency for participating food vendors. The training shall be designed to prevent Program errors or abuse and to improve Program service.

(1) When vendor training is delegated to the local agency, the State agency shall provide training to local agency staff on effective vendor training methods.

(2) Food vendors shall be provided with pertinent Program information and guidance concerning the authorized supplemental foods, including a list of acceptable brand name products.

(i) *Monitoring of food vendors.* The State agency shall be responsible for the monitoring of food vendors within its jurisdiction. If the State agency chooses to delegate all or part of this responsibility to local agencies, the State agency shall provide training to local agency staff in effective methods of vendor monitoring.

(1) The State agency shall design and implement a system to identify high risk vendors and ensure on-site monitoring, further investigation, and sanctioning of such vendors as appropriate. Criteria for identifying high risk vendors may include such considerations as level and/or severity of suspected overcharges in redeemed food instruments, errors in redeemed food instruments, or participant complaints.

(2) The State agency shall design and implement a system to conduct on-site monitoring visits to at least 10 percent of authorized food vendors per year, selected on a representative basis, in order to survey the types and levels of abuse and errors among participating food vendors and to take corrective action, as appropriate. The State agency may submit an alternate representative vendor monitoring plan, based on statistical sampling methods, for FNS approval.

(3) A summary of the results of the monitoring of high risk and representative food vendors and of the review of food instruments shall be submitted annually to FNS and within four months after the end of each fiscal year. Plans for improvement in the coming year shall be included in the State Plan, in accordance with § 246.4.

(4) The following shall be documented for all on-site vendor monitoring visits, at a minimum: Names of both vendor and reviewer; date of review; nature of problem(s) detected or the observation that the vendor appears to be in compliance with Program requirements; how the vendor plans to correct deficiencies detected; and the signature of the reviewer. Methods of on-site monitoring visits may include, but are not limited to: compliance purchases, review of cashier check-out procedures, review of inventory records, and review of the availability and prices of Program supplemental foods.

(5) The State agency shall have the capability to conduct compliance purchases to collect evidence of improper vendor practices, or shall arrange for this responsibility to be assumed by the proper State or local authorities.

(j) *Participant and vendor complaints.* The State agency shall have procedures which document the handling of complaints by participants and vendors. Complaints of civil rights discrimination shall be handled in accordance with § 246.8(b).

(k) *Participant and vendor sanctions.* (1) The State agency shall establish policies which determine the type and level of sanctions to be applied against food vendors, based upon the severity and nature of the Program violations observed, and such other factors as the State agency determines appropriate, such as whether the violation represented repeated offenses over a period of time, whether the offenses represented vendor policy or whether they represented the actions of an individual employee who did not understand Program rules, and whether prior warning and an opportunity for correction was provided to the vendor. Vendor offenses which are subject to sanctions shall include at least the following: Providing cash, unauthorized foods or other items to participants in lieu of authorized supplemental foods; charging the State or local agency for foods not received by the participant; and charging the State or local agency more for supplemental foods than other customers are charged for the same food item. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18.

(i) Food vendors may be subject to sanctions in addition to, or in lieu of, disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in § 246.23, in case of deliberate fraud.

(ii) The period of disqualification from Program participation shall be a reasonable period of time, not to exceed three years. The maximum period of disqualification shall be imposed only for serious or repeated Program abuse.

(iii) The State agency may disqualify a food vendor from the Program who is currently disqualified from another FNS program. If a State agency chooses to use this option, it shall include a provision to this effect in its vendor agreement, in accordance with paragraph (f) of this section.

(iv) Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardships for participants.

(2) The State agency shall establish procedures designed to control participant abuse of the Program. Participant abuse includes, but is not limited to, knowing and deliberate misrepresentation of circumstances to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; and physical abuse, or threat of physical abuse, of clinic or vendor staff. The State agency shall establish sanctions for participant abuse. Such sanctions may, at the discretion of the State agency, include disqualification from the Program for a period up to three months. Warnings may be given prior to the imposition of sanctions. Before a participant is disqualified from the Program for alleged abuse, that participant shall be given full opportunity to appeal a disqualification as set forth in § 246.9.

(3) The State agency shall refer food vendors and participants who abuse the Program to Federal, State or local authorities for prosecution under applicable statutes, where appropriate.

(l) *Control of food instruments.* The State agency shall control and provide accountability for the receipt and issuance of supplemental foods and food instruments. The State agency shall ensure that there is secure transportation and storage of unissued food instruments.

(m) *Payment to food vendors.* The State agency shall ensure that food vendors are promptly paid for food costs. Payments for valid food instruments shall be made within 60 days after receipt of the food instruments. Actual payment to food vendors may be made by local agencies.

(n) *Reconciliation of food instruments.* The State agency shall identify disposition of all food instruments as: validly redeemed, lost or stolen, expired, duplicate, voided or not matching issuance records. Reconciliation of food instruments shall entail reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of food instruments.

(1) Reconciliation of food instruments shall be performed within 150 days of the first valid date for participant use and shall be in accordance with the financial management requirements of § 246.13.

(2) The State agency shall be able to demonstrate to FNS its capability to reconcile a given redeemed food instrument to valid certification records.

(o) *Not for use in institutions.* The State agency shall ensure that supplemental foods are not issued for use in institutions which serve meals.

(p) *Recipients of food instruments.* The State agency shall ensure that each participate or representative signs a receipt for supplemental foods or food instruments. This requirement shall not pertain to systems which deliver food instruments by alternate means pursuant to paragraph (s)(8) of this section, such as by mailing. The State agency shall establish uniform procedures which allow proxies designated by participants to act on their behalf. In determining whether an individual participant should be allowed to designate a proxy or proxies, there shall be consideration of whether there are adequate measures for the provision of nutrition education and health services to that participant.

(q) *Instructions to recipients.* The State agency shall ensure that participants and their proxies receive instructions on the proper use of food instruments, or on the procedures for receiving supplemental foods. Participants and their proxies shall also be notified that they have the right to complain about improper vendor practices with regard to Program responsibilities.

(r) *Conflict of interest.* The State agency shall ensure that no conflict of interest exists between any local agency and the food vendor or vendors within the local agency's jurisdiction.

(s) *Retail purchase systems.* Retail purchase food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to local retail outlets. All retail purchase food delivery systems shall meet the following requirements:

(1) The State agency shall use uniform food instruments within its jurisdiction. The State agency is responsible for the design and printing of the uniform food instruments, and their serialization.

(2) Each food instrument shall clearly bear on its face the following information:

(i) The first date on which the food instrument may be used by the participant to obtain supplemental foods.

(ii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the date specified in paragraph (s)(2)(i) of this section or, for the participant's first month of issuance, it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific expiration date on each instrument, all instruments may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the instrument may be used.

(iii) An expiration date by which the food vendor is required to submit the food instrument for payment. This date shall be no more than 90 days from the date specified in paragraph (s)(2)(i) of this section. If the date is less than 90 days, then the State agency shall ensure that the food vendor is able to submit food instruments for redemption within the required time limit without undue burden. This date may otherwise be printed as being no more than 90 days after the date in paragraph (s)(2)(i) of this section.

(iv) A unique and sequential serial number.

(v) At the discretion of the State agency, a maximum purchase price which is higher than the price of the food for which it will be used, but low enough to be a reasonable protection against potential losses of funds. When the maximum value is shown, the space for the actual value of the supplemental foods purchased shall be clearly distinguishable. For example, the words "actual amount of sale" could be printed larger and in a different area of the food instrument than the maximum value.

(3) The State agency shall implement requirements to ensure that the actual purchase price of the supplemental foods is recorded at the time of purchase. For example, the State agency may require that the food vendor write the purchase price on the food instrument prior to the signature of the participant.

(4) The State agency shall implement procedures to ensure that every redeemed food instrument can be identified to the food vendor which redeemed the food instrument. If the vendor utilizes outlets, all outlets participating in the Program shall be identified. For example, the State agency may require that all authorized food vendors stamp their names on all redeemed food instruments prior to submission.

(5) The State agency shall establish procedures to ensure the propriety of redeemed food instruments.

(i) The State agency shall design and implement a system of review of food instrument to detect suspected overcharges and to identify food vendors with high levels of suspected overcharges.

(ii) The State agency shall design and implement a system of review of food instruments to detect errors, including, at least, purchase price missing, participant signature missing, vendor identification missing, redemption by vendor outside of the valid date and, as appropriate, altered prices. The State agency shall implement procedures to reduce the number of errors, where possible.

(iii) When payment for a food instrument is denied or delayed, or a claim for reimbursement is assessed, the affected food vendor shall have an opportunity to correct or justify the overcharge or error. For example, if the actual price is missing, the vendor may demonstrate what price should have been included. If the State agency is satisfied with the correction or justification, then it shall provide payment, or adjust the payment or claim to the vendor accordingly.

(iv) If a claim is assessed against a food vendor after the problem food instrument has been paid, the State agency may offset future payments to the food vendor for the amount of the claim. If a State agency chooses to utilize this option, it shall include a provision to this effect in its vendor agreement, in accordance with paragraph (f) of this section.

(6) With justification and documentation, State agencies may reimburse food vendors for food instruments submitted after the expiration date. If the total value of the food instruments submitted at one time exceeds $200.00, reimbursement may not be made without the approval of the FNS Regional Office.

(7) The State agency shall ensure that no more than a three-month supply of food instruments is issued to any participant at one time and that nutrition education and health services are frequently made available to the participant.

(8) To ensure that nutrition education and health services are frequently available to participants, FNS recommends that, wherever feasible, participants personally obtain their food instruments from the local agency. However, the State agency shall develop guidelines for the delivery of food instruments to participants through means other than direct pick-up of food instruments, such as through the mailing of food instruments.

(i) Food instruments may be mailed or otherwise delivered to participants on a local agency-wide basis only if approved by the State agency, on the basis of hardships which may be encountered by the target population of the local agency such as seasonally inclement weather.

(ii) A local agency may mail, or otherwise deliver, food instruments to an individual on the basis of difficulties of the participant and his or her designated proxy in obtaining the food instruments, for reasons such as illness, imminent childbirth, or difficulty of access to the local agency. If the initial hardship is resolved, the mailing or other delivery of the food instruments shall be discontinued.

(t) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for—

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth in paragraph (s) of this section;

(2) Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States. The selection of home delivery vendors that are given exclusive contracts to an area shall conform to requirements of 7 CFR Part 3015; and

(3) The accountable delivery of supplemental foods to participants. The State agency shall ensure that—

(i) Home delivery vendors are paid only after the delivery of supplemental foods to the participants;

(ii) There exists a routine procedure to verify the actual delivery of supplemental foods to participants. At a minimum, such verification must occur at least once a month; and

(iii) There is retention of records of delivery of supplemental foods and bills sent or payments received for such supplemental foods for at least three years and access of State, local and/or Federal authorities to such records.

(u) *Direct distribution systems.* Direct distribution food delivery systems are systems in which participants pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for—

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth under paragraph (s) of this section;

(2) Adequate storage and insurance coverage that minimizes the danger of loss due to theft, infestation, fire, spoilage, or other causes;

(3) Adequate inventory control of food received, in stock, and issued;

(4) Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(5) The availability of Program benefits to participants and potential participants who live at great distance from storage facilities; and

(6) The accountable delivery of supplemental foods to participants.

§ 246.13 Financial management system.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program. This shall include an accounting for all property and other assets and all Program funds received and expended each fiscal year.

(b) *Internal control.* The State agency shall maintain effective control over and accountability for all Program grants and funds. The State agency must have effective internal controls to ensure that expenditures financed with Program funds are authorized and properly chargeable to the Program.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR Part 3015, and FNS guidelines and instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Use of minority and women-owned banks.* Consistent with the national goals of expanding opportunities for minority business enterprises, State and local agencies are encouraged to use minority and women-owned banks.

(h) *Reconciliation of food instruments.* The State agency shall reconcile food instruments in accordance with § 246.12(n).

(i) *Transfer of cash.* The State agency shall have controls to minimize the time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursements of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the actual date that disbursement of funds is made. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with requirements prescribed by FNS and the State agency pursuant to the requirements of this section.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

§ 246.14 Program costs.

(a) *General.* (1) The two kinds of allowable costs under the Program are "food costs" and "administrative and program services costs." In general, costs necessary to the fulfillment of Program objectives are to be considered allowable costs. The two types of administrative and program services costs are:

(i) Direct costs. Those direct costs that are allowable under 7 CFR Part 3015.

(ii) Indirect costs. Those indirect costs that are allowable under 7 CFR Part 3015. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 7 CFR Part 3015, a claim for indirect costs shall be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Except as provided in paragraph (e) of this section, funds allocated by FNS for food purchases may not be used to pay administrative and program services costs. However, administrative and program services funds may be used to pay for food costs.

(b) *Specified allowable food costs.* Food costs are the acquisition cost of the supplemental foods provided to State or local agencies or to participants, whichever receives foods first. The State agency shall ensure that food costs do not exceed the food vendor's customary sale price. For example, in retail purchase systems, food costs may not exceed the shelf price of the food provided.

(c) *Specified allowable administrative and program services costs.* Allowable administrative and program services costs include the following:

(1) The cost of nutrition education which meets the requirements of § 246.11. During each fiscal year, the State agency shall use an amount equal to at least one-sixth of either the State agency's administrative and program services expenditures or its administrative and program services grant for nutrition education, whichever is less. The State agency shall document the full amount of total administrative and program services expenditures attributable to nutrition education, including grant funds and other funds or values in its final closeout report for each fiscal year. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year administrative and program services expenditures or administrative and program services grant level, whichever is less. If the State agency's reported nutrition education expenditures are less than the amount required to be spent, FNS will issue a claim for the difference and accordingly reduce the State agency's Letter of Credit and grant level for that fiscal year. The State agency may request prior written permission from FNS to spend less than one-sixth of its administrative and program services expenditures on nutrition education if the State agency can document that a total of funds from other sources and Program funds will be expended at an amount equal

to one-sixth of administrative and program services expenditures. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification and the cost of prescribing and issuing supplemental foods shall not be applied to the one-sixth minimum amount required to be spent on nutrition education. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education may include, but need not be limited to—

(i) Salary and other costs for time spent on nutrition education consultations whether with an individual or group;

(ii) The cost of procuring and producing nutrition education materials including handouts, flip charts, filmstrips, projectors, food models or other teaching aids and mailing nutrition education materials to participants;

(iii) The cost of training nutrition educators, including costs related to conducting training sessions and purchasing and producing training materials;

(iv) The cost of conducting evaluations of nutrition education, including contractor involvement;

(v) Salary and other costs incurred in developing the nutrition education portion of the State Plan and local agency nutrition eduction plans; and

(vi) The cost of monitoring nutrition education.

(2) The cost of Program certification procedures, including the following—

(i) Laboratory fees incurred for tests conducted to determine whether persons are at nutritional risk;

(ii) Expendable medical supplies necessary to determine whether persons are at nutritional risk;

(iii) In connection with nutritional risk determinations, medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on certification.

(3) The cost of outreach services.

(4) The cost of administering the food delivery system, including the cost of transporting food.

(5) The cost of translators for materials and interpreters.

(6) The cost of fair hearings, including the cost of an independent medical assessment of the appellant, if necessary.

(7) The cost of transporting rural participants to clinics when prior approval for using Program funds to provide transportation has been granted by the State agency and documentation that such service is considered essential to assure Program access has been filed at the State agency. Direct reimbursement to participants for transportation cost is not an allowable cost.

(8) The cost of monitoring and reviewing Program operations.

(d) *Costs allowable with approval.* The following costs are allowable only with the prior approval of FNS:

(1) Automated information systems which are required by a State or local agency except for those used in general management and payroll, including acquisition of automatic data processing hardware or software whether by outright purchase, rental-purchase agreement or other method of acquisition. Approval shall be granted by FNS if the proposed system meets the requirements of this part, A-90, and 7 CFR Part 3015. At the time the State agency decides to seek computerization, except for use in general management or payroll, it shall inform FNS and seek approval, if required.

(2) Capital expenditures over $2,500.00, such as the cost of facilities, equipment, including medical equipment, other capital assets and any repairs that materially increase the value of useful life of capital assets.

(3) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(e) *Recovery of vendor claims.* The State agency shall retain funds collected by the recovery of claims assessed against food vendors or funds not paid to food vendors as a result of reviews of food instruments prior to payment.

The State agency may use up to 50 percent of these funds for administrative and program services purposes, provided that the base amount from which the percentage may be taken is not established until after the vendor has had full opportunity to correct or justify the error or apparent overcharge in accordance with § 246.12(s)(5)(iii). The State agency shall not transfer any such funds from its food account to its administrative and program services account until after the vendor has exercised this right, if the vendor chooses to do so. After such funds have been transferred, the remainder shall be used to pay food costs. When these funds are used for administrative and program services purposes, the State agency shall report such expenditures to FNS through routine reporting procedures. The State agency shall maintain documentation to support the level of funds retained under this paragraph by the State agency for administrative and program services purposes.

§ 246.15 Program income other than grants.

(a) *Interest earned on advances.* State and local agencies and clinics may retain interest earned on advances of Program funds in accordance with the provisions of 7 CFR Part 3015.

(b) *Other Program income.* The State agency may use current Program income for costs incurred in the current fiscal year and, with the approval of FNS, for costs incurred in previous or subsequent fiscal years. With the approval of FNS, Program income may be used for costs which are in addition to the allowable costs of the Program but which nevertheless further the objectives of the law authorizing the Program. Provided that the costs supported by the income further the broad objectives of the Program, they need not be a kind that would be permissible as charges to Federal funds.

§ 246.16 Distribution of funds.

(a) *General.* This section prescribes the procedures for the distribution of available funds by FNS to participating State agencies and by State agencies to local agencies. The State agency shall ensure that all Program funds are used only for Program purposes. As a prerequisite to the receipt of funds, the State agency shall have executed an agreement with the Department and shall have received approval of its State Plan. To accomplish the distribution of funds, State agencies shall furnish FNS with any necessary financial and Program data.

(b) *Distribution of funds to State agencies.* Funds made available to the Department for the Program in any fiscal year will be distributed by FNS on the basis of funding formulas which allocate funds to all State agencies for food costs and administrative and program services costs. However, up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating Program performance, evaluating health benefits, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by FNS. State agencies shall use funds to cover those allowable and documented Program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

(c) *Distribution of funds to local agencies.* The State agency shall provide to local agencies all funds made available by FNS, except those funds necessary for allowable State agency administration and program services costs and food costs paid directly by the State agency. The State agency shall distribute the funds based on claims submitted at least monthly by the local agency. Where the State agency advances funds to local agencies, the State agency shall ensure that each local agency has funds to cover immediate disbursement needs, and the State agency shall offset the advances made against incoming claims each month to ensure that funding levels reflect the actual expenditures reported by the local agency. Upon receipt of Program funds from the Department, the State agency shall take the following actions:

(1) Distribute funds to cover expected food cost expenditures.

(2) Allocate funds to cover expected local agency administrative and program services costs in a manner which takes into consideration each local agency's needs. For the allocation of administrative and program services funds, the State agency shall take the following actions:

(i) Develop an administrative and program services funding procedure, in cooperation with several representative local agencies, which takes into account the varying needs of the local agencies. The State agency shall consider the views of local agencies, but the final decision as to the funding procedure remains with the State agency. The State agency shall take into account factors it deems appropriate to further proper, efficient and effective administration of the Program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(ii) Forward in advance to local agencies those administrative and program services funds necessary for the successful commencement of Program operations during the first three months of operation or until the local agency reaches its projected caseload level, whichever comes first.

(d) *Recovery of funds.* Funds may be recovered from a State agency at any time FNS determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the Program.

(e) *Reallocation of funds.* Any funds recovered under paragraph (d) of this section will be reallocated by FNS as deemed appropriate.

§ 246.17 Closeout procedures.

(a) *General.* State agencies shall submit preliminary and final closeout reports for each fiscal year. All obligations shall be liquidated before closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur.

(b) *Fiscal year closeout reports.* State agencies—

(1) Shall submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available;

(2) Shall submit to FNS, within 150 days after the end of the fiscal year, final fiscal year closeout reports;

(3) May submit revised closeout reports. FNS will reimburse State agencies for additional costs claimed in a revised closeout report up to the State's original grant level, if costs are properly justified and if funds are available for the fiscal year pertaining to the request. FNS will not be responsible for reimbursing State agencies for unreported expenditures later than one year after the end of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR Part 3015.

(1) FNS may disqualify a State agency's participation under the Program, in whole or in part, or take such remedies as may be legal and appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date. A State agency shall disqualify a local agency by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program.

(2) FNS or the State agency may disqualify the State agency or restrict its participation in the Program when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may disqualify the local agency or restrict

its participation in the Program under the same conditions. The two parties shall agree upon the conditions of disqualification, including the effective date thereof, and, in the case of partial disqualification, the portion to be disqualified.

(3) Upon termination of a grant, the affected agency shall not incur new obligations for the disqualified portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for the local agency.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, grant records as specified in § 246.25. The closeout of a grant does not affect the State or local agency's responsibilities regarding property or with respect to any Program income for which the State or local agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be resonsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or the State or local auditors. Audits performed in accordance with § 246.20 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without the audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 246.18 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a State or local agency action may appeal the action.

(1) The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied or, during the course of the contract or agreement, when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. Expiration of a contract or agreement with a food vendor or local agency shall not be subject to appeal.

(2) The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.

(3) The State agency may take adverse action against a vendor after the 15-day advance notification period mandated by paragraph (b)(1) of this section has elapsed. In deciding whether or not to postpone adverse action until a hearing decision is rendered, the State agency shall consider whether participants would be unduly inconvenienced and may consider other relevant criteria, determined by the State agency.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency or vendor with the following:

(1) Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action. In the case of the disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

(2) The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

PY AVAILABLE

(6) The opportunity to be represented by counsel, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision concerning the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(c) *Continuing responsibilities.* Appealing an action does not relieve a local agency, or a food vendor permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of any written agreement or contract with the State or local agency.

(d) *Judicial review.* If a State level decision is rendered against the local agency or food vendor and the appellant expresses an interest in pursuing a higher review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

Subpart F—Monitoring and Review

§ 246.19 Management evaluation and reviews.

(a) *Management evaluations and reviews.* (1) FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under this part, FNS guidelines, instructions, and the Federal-State agreement with the Department. FNS will provide assistance to States in discharging this responsibility, establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State Program performance.

(2) If FNS determines through a management evaluation or other means that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its Program or has failed to comply with the requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's administrative and program services funds.

(3) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 246.22. Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the Chief State Health Officer or equivalent in writing of the deficiencies found and of FNS' intention to withhold administrative and program services funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 60 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan with a schedule according to which the State agency shall accomplish various actions to correct the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the Chief State Health Officer or equivalent in writing within 30 days of receipt of the plan. The letter approving the corrective action plan will describe the technical assistance that is available to the State agency to correct the deficiencies. The letter will also advise the Chief State Health Officer or equivalent of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action as been taken, FNS will assess such action, and, if necessary, will perform a follow-up review to determine if the noted deficiencies have been corrected.

FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed.

(v) If an acceptable corrective action plan is not submitted within 60 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold administrative and program services funds through a reduction of the State agency Letter of Credit or by assessing a claim against the State agency. FNS will notify the Chief State Health Officer or equivalent of this action.

(vi) If compliance is achieved before the end of the fiscal year in which the administrative and program services funds are withheld, the funds withheld shall be restored to the State agency's Letter of Credit. FNS is not required to restore funds withheld if compliance is not achieved until the subsequent fiscal year. If the 60-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year.

(b) *State agency responsibilities.* (1) The State agency shall establish an on-going management evaluation system which includes at least the monitoring of local agency operations, the review of local agency financial and participation reports, the development of corrective action plans to resolve Program deficiencies, the monitoring of the implementation of corrective action plans, and on-site visits. The results of such actions shall be documented.

(2) Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, certification, nutrition education, civil rights compliance, accountability, financial management systems, and food delivery systems. In accordance with § 246.12(i), the State agency shall ensure that State or local agency personnel conduct the necessary on-site monitoring of high risk and representative vendors. If the State agency delegates vendor monitoring to local agencies, it shall evaluate the effectiveness of these monitoring visits.

(3) The State agency shall conduct annual monitoring reviews of each local agency, including on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. the State agency may conduct such additional on-site reviews as it finds necessary.

(4) The State agency shall develop a corrective action process which includes: prompt notification of deficiencies to the local agency, timely development of corrective action plans, and monitoring of local agency implementation of such plans.

(5) When required by FNS, the State agency shall provide special reports on Program activities and act to correct deficiences in Program operations.

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors.

§ 246.20 Audits.

(a) *Federal audit responsibilities.* (1) OIG reserves the right to perform audits of State and local agencies and other organizations involved in the Program as determined by OIG to be necessary. In performing such audits, OIG will rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

(2) The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or a proposed corrective action plan regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific timeframes for its implementation and for completion of correction of deficiencies and their causes.

(3) FNS will determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(b) *State audit responsibilities.* (1) State agencies shall comply with the provisions of 7 CFR Part 3015 regarding independent organization-wide audits of financial operations. In conformance with 7 CFR Part 3015, State agencies shall arrange for independent audits of financial operations, including compliance with appropriate provisions of Federal laws and regulations, and shall ensure that audits are made on an organization-wide basis rather than on a program basis. When organization-wide audits are done the State agency shall cause procedures to be established which ensure that FNS programs are included in the universe of Federal awards from which a sample is drawn.

(2) Such organization-wide audits shall be used to determine whether—

(i) Financial operations are conducted properly;

(ii) Financial statements are presented fairly;

(iii) State and local agencies are complying with the laws, regulations and administrative requirements that affect the expenditure of Federal funds;

(iv) State and local agencies have established internal procedures to meet the financial management objectives of federally assisted programs; and

(v) State and local agencies are providing accurate and reliable information to the Federal government. If such agencies fail to arrange for the required audits at the appropriate frequency or fail to ensure that an acceptable audit is performed at the appropriate frequency, the respective cognizant audit agencies may arrange for the performance of the required audits. If the cognizant audit agencies arrange for the required audits because of these circumstances, the State agencies shall reimburse the respective cognizant audit agencies for the pro rata cost of their organization-wide audits.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of administrative and program services costs and may be funded from the State or local agency administrative and program services funds, as appropriate. For purposes of determining the Program's pro rata share of indirect costs associated with organization-wide audits, the cost of food shall not be considered in the total dollar amount of the Program.

§ 246.21 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 246.22 Administrative appeal of FNS decisions.

(a) *Right to appeal.* When FNS asserts a sanction against a State agency under the provisions of § 246.19, the State agency may appeal and must be afforded a hearing or review by an FNS Administrative Review Officer. The right of appeal shall not apply to claims for repayment assessed by FNS against the State agency under § 246.23(a). A State agency shall have the option of requesting a hearing to present its position or a review of pertinent documents and records including any additional written submission prepared by the State agency.

(1) FNS will send a written notice by Certified Mail-Return Receipt Requested to the state agency or otherwise ensure receipt of such notice by the agency when asserting a sanction against a State agency as specified in § 246.19(a).

(2) A State agency aggrieved by a sanction asserted against it may file a written request with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, for a hearing or a review of the record. Such request shall be sent by Certified Mail-Return Receipt Requested and postmarked within 30 days of the date of receipt of the sanction notice. The envelope containing the request shall be prominently marked "REQUEST FOR REVIEW OR HEARING." The request shall clearly identify the specific FNS sanction(s) being appealed and shall include a photocopy of the FNS notice of sanction. If the State agency does not request a review of hearing within 30 days of receipt of the notice, the administrative decision on the sanctions will be considered final.

(b) *Acknowledgment of request.* Within 15 days of receipt by the Director of the Administrative Review Division of a request for review or hearing, the Director will provide the State agency with a written acknowledgment of the request.

(1) The acknowledgment will include the name and address of the FNS Administrative Review Officer to review the sanction;

(2) The acknowledgment will also notify the State agency that within 30 days of the receipt of the acknowledgment, the State agency shall submit three sets of the following information to the Administrative Review Officer—

(i) A clear, concise identification of the issue(s) in dispute;

(ii) The State agency's position with respect to the issue(s) in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue(s) in dispute and a copy of the specific sanction notice provided by FNS;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue(s) in dispute;

(v) The relief sought by the State agency;

(vi) The identify of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(c) *FNS action.* (1) When a hearing is requested pursuant to this section, the Administrative Review Officer will, within 60 days after receipt of the State agency's information, schedule and conduct the hearing. The State agency will be advised of the time, date and location of the hearing at least 10 days in advance.

(2) When a hearing is requested, the FNS Administrative Review Officer will make a final determination within 30 days after the hearing, and the final determination will take effect upon delivery of the written notice of this final decision to the State agency.

(3) When a review is requested, the FNS Administrative Review Officer will review information presented by a State agency and will make a final determination within 30 days after receipt of that information. The final determination will take effect upon delivery of the written notice of this final decision to the State agency.

§ 246.23 Claims and penalties.

(a) *Claims.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for supplemental foods or administrative and program services purposes were, through State or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a formal claim will be assessed by FNS against the State agency. The State agency shall pay promptly to FNS a sum equal to the amount of the administrative and program services funds or the value of supplemental foods or food instruments so misused or diverted.

(2) If FNS determines that any part of the Program funds received by a

State agency; or supplemental foods, either purchased or donated commodities; or food instruments, were lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the supplemental foods or food instruments so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled food instruments. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the food instruments issued have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the Program, the State agency shall provide the funds necessary to maintain Program operations at the grant level authorized by FNS.

(c) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall comply with the requirements of A-90 and 7 CFR Part 3015 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in A-90 and 7 CFR Part 3015 do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in A-90 and 7 CFR Part 3015.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in 7 CFR Part 3015 in their utilization and disposition of real property and equipment, including automated data processing equipment, acquired in whole or in part with Program funds.

§ 246.25 Records and reports.

(a) *Recordkeeping requirements.* Each State and local agency shall maintain full and complete records concerning Program operations. Such records shall comply with 7 CFR Part 3015 and the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food instrument issuance and redemption, equipment purchases and inventory, certification, nutrition education, civil rights and fair hearing procedures.

(2) All records shall be retained for a minimum of three years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the three-year period, the records shall be kept until all issues are resolved, or until the end of the regular three-year period, whichever is later. If FNS deems any of the Program records to be of historical interest, it may require the State or local agency to forward such records to FNS whenever either agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with Program funds shall be retained for three years after its final disposition.

(4) All records, except medical case records of individual participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and participation reports.* State agencies shall submit financial and Program performance data on a monthly basis as specified by FNS. Such information may include but shall not be limited to, actual and projected participation, the number of persons on waiting lists, and itemized administrative and Program services funds expenditures. Semiannually, on dates specified by FNS, State agencies shall report the number of persons enrolled in the Program by category (i.e., pregnant, breastfeeding, and postpartum women, infants, and children) within each priority level as established in §246.7(d)(4). State agencies shall require local agencies to report financial and participation information as is necessary for the efficient management of food and administrative and Program services funds. When considered necessary and feasible by FNS, State agencies may be required to—

(1) Show in the "Remarks" section of the Financial and Participation Report the amount of cash advances exceeding three days need being held by their local agencies or contractors; and

(2) Provide short narrative explanations of actions taken by the State agency to reduce such excess balances.

(c) *Civil rights.* The State agency shall ensure that each local agency participating under the Program submits a report of racial and ethnic participation data to the State agency, at a frequency prescribed by FNS.

(d) *Source documentation.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(e) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(f) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve its objectives.

(g) *Extension of reporting deadline.* FNS may extend the due date for any Financial and Participation Report upon receiving a justified request from the State agency. The State agency should not wait until the due date if an extension is to be requested, but should submit the request as soon as the need is known. Failure by a State agency to submit a report by its due date may result in appropriate enforcement actions by FNS in accordance with § 246.19(a)(2), including withholding of further grant payments, suspension or termination of the grant.

§ 246.26 Other provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income or resources of participants or their families for any purpose under Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals.

(c) *Medical information.* FNS may require the State or local agencies to supply medical data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be at nutritional risk.

(d) *Confidentiality.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program or the Comptroller General of the United States for audit and examination authorized by law.

§ 246.27 Program information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 33 North Avenue, Burlington, Massachusetts 01803.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, CN-021150 Trenton, New Jersey 08650.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 50 E. Washington Street, Chicago, Illinois 60602.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 2420 West 26th Avenue, Room 430-D, Denver, Colorado 80211.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, Room 400, San Francisco, California 94108.

[50 FR 6121, Feb. 13, 1985; 50 FR 8098, Feb. 28, 1985]

§ 246.28 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR Part 246 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

7 CFR Part 246 section where requirements are described	Currrent OMB control no.
.4	0584-0043
.5	0584-0043
.6	0584-0043
.7(e), (h), (j)	0584-0043
.11(d)	0584-0043

7 CFR Part 246 section where requirements are described	Currrent OMB control no.
.12(f), (i), (i)(3), (j)	0584-0043
.14(d)(1)	0584-0043
.16(c)	0584-0043
.17(c)(1)	0584-0043
.19	0584-0043
.20(a)	0584-0043
.25(a), (b)	0584-0043

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

Sec.

247.1 General purpose and scope.
247.2 Definitions.
247.3 Administration.
247.4 Donation of supplemental foods.
247.5 State agency plan of program operation and administration.
247.6 Selection of local agencies.
247.7 Certification.
247.8 Nutrition education.
247.9 Financial management systems.
247.10 Administrative funding.
247.11 Administrative costs.
247.12 Program income.
247.13 Records and reports.
247.14 Procurement and property management standards.
247.15 Audits.
247.16 Investigations.
247.17 Claims.
247.18 Closeout procedures.
247.19 Nondiscrimination.
247.20 Fair hearing procedures.
247.21 Management evaluation and reviews.
247.22 Administrative appeal of State agency decisions.
247.23 Miscellaneous provisions.

AUTHORITY: Food and Agriculture Act of 1977, Pub. L. 95-113, sec. 5, 91 Stat. 980 et seq., unless otherwise noted.

SOURCE: 46 FR 6341, Jan. 21, 1981, unless otherwise noted.

§ 247.1 General purpose and scope.

This part specifies the policies and prescribes the regulations for the Commodity Supplemental Food Program (CSFP) under which women, infants and children in low-income groups, vulnerable to malnutrition, may obtain supplemental nutritious foods donated by the U.S. Department of Agriculture. The purpose of the Program is to provide supplemental foods and nutrition education to eligible persons through State or local agencies.

§ 247.2 Definitions.

For the purpose of this part and of all contracts, guidelines, instructions, forms, and other related documents, the term:

"*Administrative costs*" means those direct and indirect costs, identified under FMC 74-4, which State and local agencies determine to be necessary to support Program operations. Such costs are further addressed in § 247.11.

"*A-90*" means Office of Management and Budget Circular A-90 which provides guidance for the coordinated development and operation of information systems.

"*A-102*" means Office of Management and Budget Circular A-102 which sets forth uniform administrative requirements for grants-in-aid to State and local governments and federally recognized Indian tribal governments.

"*A-110*" means Office of Management and Budget Circular A-110 which sets forth uniform administrative requirements for grants to, and other agreements with, institutions of higher education, hospitals, and other quasi-public and private non-profit organizations.

"*Breastfeeding women*" means women up to one year postpartum who are breastfeeding their infants.

"*Categorical ineligibility*" means persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, or infants or children.

"*Certification*" means the use of criteria and procedures to assess and document each applicant's eligibility for the Program.

"*Children*" means persons who are at least one year of age but have not reached their sixth birthday.

"*Department*" means the U.S. Department of Agriculture.

"*Distributing agency*" means an agency which has entered into an agreement with a State agency and with the Department for the distribution of commodities under 7 CFR Part

250, Subchapter B—Food Distribution Regulations.

"*Dual participation*" means simultaneous participation by an individual in the CSFP in more than one local agency or clinic, or simultaneous participation in the CSFP and in the Special Supplemental Food Program for Women, Infants and Children (WIC) 7 CFR Part 246.

"*Fiscal year*" means the Federal fiscal year covering the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following year.

"*FMC 74-4*" means Federal Management Circular 74-4, which sets forth principles for determining costs applicable to grants and contracts with State and local governments.

"*FNS*" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"*Infants*" means persons under one year of age.

"*Local agency*" means a public or private nonprofit agency which enters into an agreement with the State agency to administer the Program at the local level. A local agency determines the eligibility of applicants, distributes supplemental foods and provides nutrition education to low-income persons, either directly or through another agency with which it has entered into a written agreement in accordance with § 247.6. In addition, existing local agencies are required to maintain the health-ties at the same level that were effective prior to March 3, 1978.

All other local agencies are encouraged to develop health services linkages and, at a minimum, are required to advise participants of the importance of health care and where low-income persons can obtain such services. The term local agency includes an IHS service unit, an Indian tribe, band or group recognized by the Department of the Interior, or an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior.

"*Nonprofit agency*" means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

"*Participants*" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods under the Program.

"*Participation*" means the number of persons who have received supplemental foods through the Program in the reporting period.

"*Postpartum women*" means women up to 12 months after termination of pregnancy.

"*Pregnant women*" means women determined to have one or more embryos or fetuses in utero.

"*Program*" means the Commodity Supplemental Food Program (CSFP) of the Food and Nutrition Service of the U.S. Department of Agriculture.

"*Secretary*" means the Secretary of the U.S. Department of Agriculture.

"*SFPD*" means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

"*State agency*" means the agency of a State designated by the State to administer the Program; or an Indian tribe, band or group recognized by the Department of the Interior; or an Intertribal council or group recognized by the Department of the Interior and which has an ongoing relationship with Indian tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

"*State Agency Plan of Program Operation and Administration (State Plan)*" means the document which, as required by § 247.5 describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction.

"*Supplemental foods*" means foods donated by the Department for use by eligible persons in low-income groups who are vulnerable to malnutrition.

"*WIC Program*" means the Special Supplemental Food Program for

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Women, Infants and Children (7 CFR Part 246).

(E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b), Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c)))

[46 FR 6341, Jan. 21, 1981, as amended at 48 FR 29124, June 24, 1983]

§ 247.3 Administration.

(a) *Delegation of Authority to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, SFPD and the Regional Offices are responsible for Program administration. FNS will provide assistance to State and local agencies and evaluate all levels of Program operations to assure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation of authority to State agency.* The State agency is responsible for all operations under the Program within its jurisdiction and shall administer the Program in accordance with the requirements of this part, FMC 74-4, A-90, A-95, A-102, A-110, and 7 CFR Part 250 Subchapter B where applicable. The State agency shall provide guidance to local agencies on all aspects of Program operations. If distribution of supplemental foods or other Program operations at the State level are performed by an agency of the State other than the State agency, the State agency shall enter into a written agreement with the other agency. The agreement shall outline the responsibilities of each agency under the Program and shall be included in the State Plan. In addition, when a State agency enters into an agreement with a distributing agency, the distributing agency still must enter into a separate agreement with the Department as required by 7 CFR Part 250 Subchapter B, Food Distribution.

(c) *Agreement and State plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for the administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *Delegation of authority to local agency.* The local agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part and the State Plan.

(Approved by the Office of Management and Budget under control number 0584-0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.4 Donation of supplemental foods.

The Department shall donate supplemental foods for use in the Program in accordance with the terms and conditions of this part and with the terms and conditions applicable to distributing agencies under 7 CFR Part 250 Subchapter B, Food Distribution Regulations, as long as these provisions are not inconsistent with this part. The State agency is strictly liable to FNS for losses of supplemental foods donated by the Department and shall safeguard items from theft, spoilage, other damage or destruction or other loss. If supplemental foods donated by the Department are lost through any cause, prior to issuance to the participant, the State agency shall provide replacement in kind or submit payment to FNS in accordance with § 250.6(m) under 7 CFR Part 250 Subchapter B, Food Distribution regulations.

§ 247.5 State agency plan of program operation and administration.

(a) *Requirements.* By August 15 each year the State agency shall submit to FNS for approval a State Plan for the following fiscal year. FNS shall provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete submission, FNS shall notify the State agency that additional information is needed to complete the Plan. Any disapproval shall be accompanied by a statement of the reasons for the disapproval. Approval of the Plan by FNS is a prerequisite to the payment of funds to the State agency for Program administration and the delivery of commodities. The Plan and all amendments shall be signed by the Chief Officer of the State agency or equivalent. Portions of the State Plan which do not change from year to year need not be resubmitted. However, the State agency shall provide the title of the section(s) that remain unchanged as well as the year of the last Plan in which the section was submitted. The State Plan shall provide the following:

(1) The names and addresses of each local agency (i) which have an agreement with the State agency for Program administration; and (ii) the name and address of each certification, food distribution and storage site under the jurisdiction of the local agency.

(2) The specific income criteria and nutritional risk criteria (if used) to be used in certifying persons as being in need of supplemental foods and the period of time covered by certifications in each local agency.

(3) A description of any plans for requesting program expansion or major redistribution of caseloads within the State during the fiscal year.

(4) A description of any plans for conducting outreach to reach maximum caseload.

(5) The plan for nutrition education services for the fiscal year. The nutrition education portion of the State Plan shall include an evaluation component which includes a systematic procedure for participants' input.

(6) A detailed description of the manner in which foods are distributed to each local agency and to participants by the local agency.

(7) A description of the manner in which the State agency plans to monitor each local agency.

(8) A description of plans to involve local agencies, participants and other interested parties in the development of the State Plan for the next fiscal year.

(9) A description of how the financial management system will provide an accurate, current and complete disclosure of the financial status of the State's Program including an accurate accounting of all administrative funds received and expended.

(10) A plan for the detection of dual participation within the jurisdiction of the State agency. In States where the CSFP and either an Indian State agency for CSFP or a WIC Program State agency operate in the same area, a copy of the written agreement between the State agencies for the detection and prevention of dual participation must be submitted.

(11) Procedures developed in accordance with § 250.6(u) and provided to local agencies for reporting, processing and resolving complaints about supplemental foods.

(12) A description of the audit procedures, including: (i) A description of the scope and frequency of audits of the State agency and local agencies and a delineation of the procedures used that assure audit examinations of the CSF Program at reasonable frequency. Audit agency guidelines for selecting a sample of grant programs for audits should be addressed; (ii) a description of the audit organization in sufficient detail to demonstrate the independence of the audit organization; and (iii) the number of local agencies in which the CSF Program was included in the audit in the last four full quarters, and the number of local agency audits planned for the coming fiscal year which include examinations of the CSF Program.

(13) A description of the procedures used to comply with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113-2 and with 7 CFR Part 15, including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process.

(14) A description of the fair hearing procedures for participants.

(b) *Submission of local agency information.* Local agencies under the State agency's jurisdiction may be required to submit information, similar to the preceding requirements, to the State agency for its use in assuring compliance with this section.

(c) *Amendments.* At any time the State agency may amend the State Plan. The State agency shall submit the amendments to FNS for approval.

(d) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

(Approved by the Office of Management and Budget under control number 0584-0063)

(44 U.S.C. 3506; E.O. 12372 (July 14, 1982, 47 FR 30959); secs. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)))

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982; 48 FR 29123, June 24, 1983]

§ 247.6 Selection of local agencies.

(a) *Application of local agencies.* The State agency shall require each agency which desires approval as a local agency to submit a written application which contains sufficient information to enable the State agency to make a determination as to the eligibility of that agency. If the State agency and the local agency are the same, this requirement does not apply. The State agency shall notify the agency of the approval or disapproval of its application within 30 days of receipt of the agency's application. If the application is denied the State agency shall advise the agency of the reasons for the denial in writing and the right to appeal as set forth in § 247.22 of this part. When an agency submits an application and there are no funds to serve the area, the applicant agency shall be notified within 30 days of receipt of the application that there are currently no funds available for Program initiation or expansion. The State agency shall return the application and maintain a record of the name and address of the applicant agency. The potential agency whose application was returned shall be notified by the State agency when funds become available. The State agency may approve the application of a local agency in an area already served by the Program or a WIC program only if a new local agency is necessary to serve the full extent of need in that area or population. If the State agency approves the operation of a new local agency in an area already served by an existing Program or a WIC Program, documentation which indicates the need for both local agencies in that area shall be maintained on file at the State agency for FNS review and evaluation.

(b) *Agreements between State and local agencies.* (1) State agencies shall enter into agreements with local agencies which are approved to participate in the Program. If the State agency and the local agency are the same, this requirement does not apply. Copies of the agreement shall be kept on file at both the State and local agency for purposes of review and audit. Such agreements shall be in writing and shall contain the following:

(i) An assurance that local agencies will comply with all the fiscal and operational requirements prescribed by the State agency as required by this part; (ii) an assurance that local agencies will provide nutrition education as required by this part; (iii) for those local agencies in existence prior to March 3, 1978, an assurance that they will continue arrangements with health service providers for the provision of services to Program participants at least at the level that existed on March 2, 1978, and for other local agencies, an assurance that they will advise participants of the importance of health care and where low-income persons can obtain such care; (iv) an assurance that issuance of supplemental food is in accordance with this part and FNS food package instructions; (v) a statement that local agencies are responsible to the State agency for any loss resulting from improper or negligent issuance by them of prescriptions for supplemental foods; (vi) a statement that local agencies are responsible to the State agency for any Program losses caused by other agencies which have entered into agreements with the local agency; (vii) the names and address of each certification, food distribution and storage site under the jurisdiction of the local agency; and (viii) an assurance that the local agencies will maintain accurate and complete records with respect to their activities under the Program and retain such records for a period of 3 years following the date of submission of the final expenditure report for the period to which the report pertains.

(c) *Agreements between local agencies and other agencies.* A local agency which cannot fulfill one or more of these requirements shall enter into written agreement with another agency(s) in order to comply with these requirements. The written agreement shall state the Program responsibilities of the other agency, shall be approved by the State agency, and shall be on file at both the State agency and local agency. State agency approval of agreements with applicant agencies shall be accomplished during the application process.

(Approved by the Office of Management and Budget under control number 0584-0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.7 Certification.

(a) *Eligibility requirements.* To be certified as eligible to receive supplemental foods under the Program, each applicant shall meet the following requirements:

(1) Categorical eligibility as an infant, child, or pregnant, postpartum or breastfeeding woman;

(2) Eligibility for local benefits under existing Federal, State or local food, health or welfare programs for low-income persons;

(3) At the State agency's discretion, be determined by a physician, a staff member of the local agency or his or her designee to be at nutritional risk; and

(4) Meet a residency requirement if one is established by the State agency. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements. For example, migrant and seasonal farmworkers entering a CSFP service area shall be considered as meeting the residency requirement.

(b) *Processing standards.* (1) When there are no funds available to provide program benefits, the local agency shall maintain waiting lists of individuals who visit the local agency to apply for the Program. To enable the local agency to contact the individuals when caseload space becomes available, these waiting lists shall include the name of the applicant, the date placed on the waiting list, an address or phone number of the applicant and the applicant's status, i.e., pregnant, breastfeeding, child's age. Individuals shall be notified of their placement on a waiting list within 20 days after they visit the local agency during clinic office hours to request Program benefits.

(2) The following priorities based on categorical eligibility shall be applied when vacancies occur to ensure that persons in greatest need are served first.

(i) Pregnant and breastfeeding women and infants will be served first; (ii) children ages 1-3 second; (iii) children ages 4-5 third; and (iv) postpartum women last. Local agencies may elect to use income as a subcategory within the priority system. Local agencies who perform nutritional screening may adapt the priority system to meet their needs with FNS approval. When maximum caseload has not been reached, the local agency shall either certify the applicant or notify the applicant of ineligibility for the Program within 20 days of the applicant's first visit to the local agency to apply for participation in the Program. A person who is determined to be eligible shall receive supplemental foods within 10 days of notification of eligibility.

(c) *Issuance of supplemental foods.* Participants shall be issued prescriptions for supplemental foods by personnel of the local agency or by such other personnel as the local agency may designate. The local agency may choose to issue either a one month supply of supplemental foods each month or a two month supply of supplemental foods every other month. However, local agencies which choose to issue a two month supply every other month shall inform participants that they may still receive one month's supply if they so request.

(d) *Certification forms.* All certification data for each applicant shall be recorded on a certification form. At a minimum the information on the form shall include the following:

(1) The person's name and address.

(2) The date of initial visit to apply for participation and the date of the certification or denial.

(3) The criteria used to determine the person's eligibility or ineligibility and the signature and title of the per-

sons making the eligibility determination.

(4) The following statement shall be located directly above the applicant's signature line and shall be read by or to the applicant, or the applicant's parent or caretaker, before the application is signed:

> "This certification form is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge."

(e) *Applicant's rights.* The following sentences shall be read by, or read to, the applicant or the applicant's parent or caretaker at the time of certification. When a significant proportion of the population served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand:

(1) Standards for participation in the Program are the same for everyone regardless of race, color, or national origin.

(2) You may appeal any decision made by the local agency regarding your denial or termination from the Program.

(3) If your application is approved, the local agency will make nutrition education available to you and you are encouraged to participate.

(f) *Notification requirements.* The following responsibilities shall be performed by the State or local agency;

(1) Each applicant shall be informed during the certification procedure of the right to a fair hearing and of the illegality of participation in the Commodity Supplemental Food Program in more than one local agency, or simultaneous participation in the Commodity Supplemental Food Program and in the WIC Program.

(2) A person found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility and of the right to a fair hearing in accordance with the provisions in § 247.20. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(3) A person found ineligible for the Program at any time during the certification period shall be advised in writing 15 days before termination of eligibility of the reasons for ineligibility and of the right to a fair hearing.

(4) Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the Program is about to expire.

(5) Each participant shall receive an explanation of how the food delivery system in the local agency operates.

(6) Each participant shall be advised of the importance of participating in ongoing routine health care, the types of health services available, where they are located and how they may be obtained.

(g) *Certification periods.* Eligible pregnant women shall be certified for the duration of their pregnancy and for 6 weeks postpartum. Eligible postpartum or breastfeeding women and eligible infants and children shall be certified at the time of their entrance into the Program and at intervals prescribed by the State agency, provided such intervals do not exceed 6 months in length. Program benefits may be continued until the end of the month in which categorical ineligibility begins, for example, until the end of the month in which a child reaches the sixth birthday.

(h) *Restrictions.* The following restrictions shall be observed by State agencies:

(1) Participants shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of supplemental foods. Also, they shall not be solicited in connection with the receipt of supplemental foods for voluntary cash contributions for any purpose.

(2) Distribution of supplemental foods shall not be used as a means for furthering the political interest of any person or party.

(i) *Transfer of certification.* Each State agency shall ensure issuance of a verification of certification form to every participant who intends to relocate during the certification period. The State agency shall require the local agencies under its jurisdiction to accept verification of certification forms from participants who have been participating in the Program or the WIC Program in another local agency within or outside of the jurisdiction of the State agency. The verification of certification is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. However, if the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all waiting applicants. The verification of certification shall include the name of the participant, the date the certification was performed, the date the certification period expires, the signature and printed or typed name of the local agency official in the originating jurisdiction, the name and address of the certifying local agency and an identification number or some other means of accountability. The verification of certification form shall be uniform throughout the jurisdiction of the State agency.

(j) *Dual participation.* The State agency shall be responsible for the following:

(1) In conjunction with the local agency, the detection and prevention of dual participation within each local agency and between local agencies. As part of the certification process, applicants shall be informed of the illegality of simultaneous participation in the WIC Program and this Program or of simultaneous participation in more than one CSFP.

(2) In areas where a local agency serves the same area as an Indian State agency or WIC Program, the CSFP State agency for the Program or the WIC State agency shall agree to a plan for the detection and prevention of dual participation. The agreement must be in writing and must be made prior to operation within the same area.

(3) Participants found committing dual participation shall be terminated from one of the Programs immediately and shall be notified of termination from the other program as specified in § 247.7.

(4) At certification the local agency shall check the identification of each participant. For a child participant, an immunization record, birth certificate, or other records that local agency personnel consider adequate identification shall be acceptable. Also, when issuing supplemental foods, the local agency shall check the identification of each participant or the indentity of the adult responsible for picking up the food for a child participant.

(k) *Disqualification.* (1) The State agency may disqualify applicants and participants from Program participation for a period not to exceed 3 months if it is established by the State or local agency that the applicant, participant, parent, or caretaker fraudulently applied for and/or obtained Program benefits. However, if the person who determined the participant's eligibility determines that a serious health risk will result from disqualification from the Program and the participant is currently eligible, the disqualification shall be waived. In addition, participants may request a fair hearing, as specified in § 247.20, to contest a disqualification.

(2) For Program purposes, fraud includes, but is not limited to, the following actions if they are taken knowingly, willfully and deceitfully:

(i) Making false statements orally or in writing in order to obtain benefits to which the individual would not otherwise be eligible; (ii) concealing information in order to obtain benefits to which the individual is not eligible; (iii) altering Program documents for the purpose of receiving increased benefits to which the individual is not eligible or for the purpose of transferring benefits to an unauthorized individual; (iv) using supplemental foods in an unauthorized manner, such as trading or selling the foods; or (v) committing dual participation.

§ 247.8 Nutrition education.

(a) *General.* Nutrition education shall be thoroughly integrated into Program operations. Nutrition education shall be designed to be easily understood by individual participants and shall bear a practical relationship to their nutritional needs and household situations.

(b) *Goals.* Nutrition education shall be based on the following two broad goals: (1) To emphasize the relationship of proper nutrition to the total concept of good health, with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants and children under 6 years of age; and

(2) To assist participants in obtaining a positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition related problems through maximum use of the supplemental and other nutritious foods. This use is to be within the context of ethnic, cultural and geographic preferences. Consideration should also be given to tailoring nutrition education to meet any limitations experienced by groups of participants, such as lack of running water, lack of electricity, and limited cooking or refrigeration facilities.

(c) *State agency responsibilities.* The State agency shall ensure that the local agency fully performs its responsibilities as set forth in paragraph (d) of this section. The State agency shall also ensure that an evaluation procedure is maintained to determine the effectiveness of the nutrition education. Such evaluation procedure shall include a systematic procedure for participant input and may be conducted directly by State and local agencies or by contract for such services, so long as the evaluation is directed by a nutritionist or other professional determined by the State agency to be qualified to perform the evaluation procedure.

(d) *Local agency responsibilities.* (1) The local agency shall make nutrition education available to all adult participants and to parents or guardians of infant and child participants. Where appropriate, nutrition education for child participants is encouraged.

(2) The local agency shall direct Program funds for nutrition education to the benefit of participants and local agency staff members involved in nutrition education, in accordance with this part.

(3) The local agency shall conduct or arrange for nutrition education in a manner consistent with the nutrition education portion of the State Plan.

(4) The local agency shall include the following subject matter in the instruction given to participants:

(i) An explanation of the importance of the consumption of the supplemental foods by the participant for whom they are prescribed rather than by other family members; (ii) reference to any special nutritional needs of participants and ways to provide adequate diets; (iii) an explanation of the Program as a supplemental rather than a total food program; (iv) information on the use of the supplemental foods and on the nutritional value of these foods; (v) information on the benefits of breastfeeding; and (vi) an explanation of the importance of health care.

(e) *Food demonstrations.* Any food demonstrations using supplemental foods shall be conducted by the State or local agency solely in conjunction with nutrition education and primarily for participants under the Program. Supplemental foods may not be used for outreach, refreshments for participants, or any other such purpose. Supplemental foods may not be provided to any other community agency or facility for any purpose whatsoever, unless such agency has entered into a signed written agreement with the State or local agency to provide nutrition education services under the Program.

(Approved by the Office of Management and Budget under control number 0584-0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.9 Financial management systems.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program. This shall include an accounting for all property and other assets and all Program funds received and expended each fiscal year.

(b) *Reports.* The State agency shall maintain its financial and donated food accounts in a manner sufficient to permit the preparation of the reports required in § 247.13.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocation of costs in accordance with the cost principles and standard provisions of this part, and FMC 74-4.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time obligations are made.

(f) *Resolutions of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Letters of Credit.* All administrative funds made available under this section shall be provided to participating State agencies by means of issuance of Letters of Credit unless other funding arrangements are made with FNS. If at the end of the fiscal year, funds authorized by a Letter of Credit issued to any State agency exceed obligations, FNS shall reduce the amount of the Letter of Credit by the unobligated portion.

(h) *Payments.* Letters of Credit shall be issued to the appropriate Regional Disbursing Office in favor of the State agency. The State agency shall obtain funds needed through presentation by designated officials of a payment voucher on the Letter of Credit in accordance with procedures prescribed by FNS and consistent with the U.S. Treasury Department Circular 1075.

(i) *Transfer of cash.* The State agency shall have controls to minimize the time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursement of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the time of the actual disbursement of funds. Advances made by the State agency to local agencies shall also conform to these same standards.

(j) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with the requirements prescribed by the State agency pursuant to the requirements of this section.

(Approved by the Office of Management and Budget under control number 0584-0063)

(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.10 Administrative funding.

(a) *General.* This section prescribes the policies and procedures for payment by FNS of funds for administrative costs to participating State agencies and disbursements by State agencies to local agencies. The funds shall be paid to State agencies as specified in § 247.9, Financial Management Systems. As a prerequisite to the receipt of such funds each fiscal year, the State agency shall have executed a written agreement with the Department and shall have received FNS approval of its State Plan.

(b) *State agency funding.* (1) Funds for total State administrative costs for each of Fiscal Years 1984 and 1985 shall be allocated by FNS based on 15 percent of the sum of the annual appropriation for the program and the value of commodities donated by the Department and distributed by local agencies as part of the food package.

(2) From the portion of program funds equal to 15 percent of the program appropriation, each State shall receive a proportionate administrative grant based on its average participation reported (up to the authorized caseload level) for the latest three months for which data are available prior to the beginning of a fiscal year.

Each State agency shall receive its share of this funding on a quarterly basis. FNS reserves the right to adjust participation figures used in this computation upward or downward to ensure adequate funds are allocated when FNS believes that the participation level reported will not reflect future plans for operation, such as when a State agency plans to start or terminate the program during the year, or when a State agency's participation has increased or decreased significantly during recent months.

(3) In addition to the funding provided under paragraph (b)(2) of this section, States shall receive administrative funding to support distribution of federally donated commodities distributed as part of the program food package. Prior to the beginning of both Fiscal Years 1984 and 1985, FNS shall estimate the value of such commodities expected to be distributed to participants by local agencies in each State during that fiscal year. Fifteen percent of this estimated amount shall be provided to each State agency. Funds provided under this paragraph shall be identified and accounted for by FNS separately from funds provided under paragraph (b)(2) of this section. After the end of the fiscal year, FNS shall compute the actual value of such commodities reported as distributed to participants by local agencies in each State. Unit values of such commodities shall be provided by the Agricultural Stabilization and Conservation Service. FNS shall make whatever adjustments are necessary to ensure that each State agency has received administrative funding equal to 15 percent of the value of such commodities reported as distributed to participants by its local agencies during the fiscal year.

(4) Participation of new State agencies during the course of the fiscal year will depend on the availability of funds.

(5) FNS shall use caseload assignments to ensure that funds appropriated are not exceeded. FNS reserves the right to periodically recover and redistribute unspent administrative funds and unused caseload slots.

(6) To ensure that State agencies can properly budget for program operations, FNS guarantees that 75 percent of the administrative funding provided to each State under paragraph (b)(2) of this section will be protected from recoveries during the current fiscal year.

(7) The State agency may retain a percentage of administrative funding for State level use, based on the following formula: 15 percent of the first $50,000; plus 10 percent of the next $100,000; plus 5 percent of the next $250,000. The State may retain a maximum amount of $30,000 annually for its administrative expenditures. However, if the State agency provides warehousing services, FNS approval may be requested at the beginning of the applicable fiscal year for funds greater than those allowed under the formula; provided, the State agency can document the need and ensure that the increase will not impose undue hardship on local agencies. The remaining funds and any unused funds at the State level shall be distributed to the local agencies.

(c) *Local agency funding.* The State agency, in providing administrative funds to local agencies, shall apportion such funds among the local agencies on the basis of their respective needs so as to ensure that those local agencies evidencing higher administrative costs, while demonstrating prudent management and fiscal controls, receive a greater portion of the administrative funds.

(Sec. 5, Pub. L. 93-86, 87 Stat. 249, as added by sec. 1304(b)(2), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97-98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98-92 (7 U.S.C. 612c note))

[46 FR 6341, Jan. 21, 1981, as amended at 48 FR 46732, Oct. 14, 1983]

§ 247.11 Administrative costs.

(a) *General.* Funds provided to State and local agencies may be used to cover administrative costs identified under FMC 74-4 which State agencies determine to be necessary to carry out the Program within their jurisdiction.

(b) *Allowable costs.* The following costs are specifically identified as illustrative of costs allowable under the Program:

(1) The cost of certification procedures including: (i) Laboratory fees incurred for tests conducted to determine the eligibility of persons to participate in the Program; (ii) expendable medical supplies necessary to determine the eligibility of persons to participate in the Program; and (iii) centrifuges, measuring boards, skin fold calipers, spectrophotometers, hematofluorometers, hemoglobinometers, and scales used for determining the eligibility of persons, provided that expenditure limits will be set by FNS for each piece of equipment and expenditures which exceed the limits shall receive prior approval by the FNS Regional Office.

(2) The cost of nutrition education services provided to participants and parents and guardians of participants, and used for training local agency staff members;

(3) The cost of transporting food and of administering the food distribution system;

(4) The cost of interpreters and translators for Program materials;

(5) The cost of outreach services;

(6) The cost of audits and fair hearings;

(7) General administration of the State and local agencies including, but not limited to, personnel, warehousing, and insurance;

(8) The cost of monitoring and reviewing Program operations; and

(9) The cost of transportation for participants to and from the local agency when the local agency has determined and documented the need for such assistance.

(c) *Restrictions on allowable costs.* The following costs are allowable only with the prior approval of FNS.

(1) Automatic Data Processing equipment and system purchases whether by outright purchase, rental-purchase agreement or other method of purchase;

(2) Capital expenditures over $2,500.00 such as the cost of facilities, equipment, other capital assets and any repairs that materially increase the value or useful life of capital assets, provided that any subsequent sale of real or personal properties, purchased in whole or in part with Program funds, shall be used to reimburse FNS in an amount computed by applying to the sale proceeds the percentage of FNS participation in the original acquisition costs;

(3) Occupancy of space under rental-purchase or a lease with option to purchase agreements;

(4) Equipment rental costs where the agreement provides for rental-purchase or a lease with option to purchase; and

(5) Management studies performed by agencies or departments other than the State or local agency or those performed by outside consultants under contract with the State or local agency.

(d) *Unallowable costs.* Expenditures by a State agency or local agencies which result in costs that may not be applicable to the Program objectives are "unallowable costs." A State agency's system for financial management shall identify such unallowable costs. In addition to unallowable costs identified in FMC 74-4 the following are specifically unallowable costs for reimbursement by FNS:

(1) Costs incurred for rearrangement and alteration of facilities not required specifically for the program;

(2) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise).

§ 247.12 Program income.

Program income means gross income the State agency or local agencies earn from grant supported activities, with the exception of income from the sale of property as specified in § 247.11(c)(2). Program income earned during the agreement period shall be retained by the State agency in accordance with the provisions of A-102, Attachment E and used to further Program objectives; except that interest earned on Program funds at the State or local levels shall be used in accordance with the provisions of A-102, Attachment E. A State agency's financial management system shall provide guidelines to assure that: income earned is recorded as individual transactions within the accounting records in conformance with generally accepted accounting principles for recording expenditures and revenues; and specifically earmarked Program income is used for the purpose(s) intended.

§ 247.13 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall, in accordance with § 250.6(r), maintain accurate and complete records with respect to the receipt, disposal, and inventory of supplemental foods, including the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the result obtained from the pursuit of claims arising in favor of the State agency. Accurate and complete records shall also be maintained with respect to the receipt and disbursement of administrative funds. State agencies shall require all local agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of supplemental foods and with respect to receipt and disbursement of administrative funds. All records required by this section shall be retained for a period of 3 years following the date of submission of the annual expenditure report for the period to which the reports pertain. All records, except medical case records of participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department and the General Accounting Office of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial reports.* All financial data shall be submitted quarterly on the S.F. 269(WIC/CSFP) and/or the S.F. 272 for State agencies on the check payment system.

(c) *Participation and food distribution reports.* Participation and Food Distribution reports FNS-153 and FNS-155 shall be submitted as required by FNS, at a frequency prescribed by FNS. Annually, a physical inventory of all foods at each storage and distribution site is required to be submitted to FNS at a date specified by FNS.

(d) *Civil rights.* Each local agency participating under the Program shall submit a report of racial and ethnic participation data FNS-191, at a frequency prescribed by FNS.

(e) *Audit acceptability of reports.* To be acceptable for audit purposes, all financial and Program performance reports shall be traceable to source documentation.

(f) *Certification of reports.* Financial and Program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(g) *Use of reports.* FNS shall use State agency reports to measure progress in achieving objectives set forth in the State Plan. If it is determined, through review of State agency reports, Program or financial analysis, or an audit, that a State agency is not operating according to its State Plan, FNS may request additional information and take other appropriate actions.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.14 Procurement and property management standards.

(a) *Requirements.* State and local agencies shall comply with the requirements of Circular A-102, Attachment 0 for procurement of equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in Circulars A-90, A-102 and A-110, where applicable, do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to: Disputes, claims, protests of awards, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in Circulars A-90, A-102 and Circular A-110, where applicable.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in A-102, Attachment N, and A-110, Attachment N, where applicable, in their utilization and disposition of property acquired in whole or in part with Program funds.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.15 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or State auditors shall have access to any books, documents, papers, and records of the State and local agencies and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS shall determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a folloup review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* (1) Each State agency shall provide for an independent audit of the financial operations of the State agency and local agencies. Audits may be conducted by State and local government audit staffs, State licensed public accountants who were licensed on or before December 31, 1970, or by Certified Public Accountants and audit firms under contract to the State or local agencies. Audits shall conform to: "The Standards of Audit of Governmental Organizations, Program Activities and Functions," issued by the Comptroller General of the United States (Reprint 1974, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," issued by the U.S. General Accounting Office, October 1978 (for sale by the U.S. General Accounting Office, Distribution Section, Room 1518, 441 G Street, N.W., Washington, DC 20013); any compliance supplements approved by OMB; and generally accepted auditing standards established by the American Institute of Certified Public Accountants. An audit shall be used to determine whether:

(i) Financial operations are properly conducted; (ii) the financial reports are fairly presented; (iii) the State or local agency has complied with applicable laws, regulations, and administrative requirements pertaining to financial management; and (iv) proper inventory controls (physical and paper) are being maintained.

(2) The State agency shall conduct audits in accordance with the provisions of A-102, Attachment P. Audits of the State agency and the local agencies under the State agency's jurisdiction shall be performed in a representative sample of grant program audit examinations during each audit cycle which occurs, not less frequency than once every two years. In some audit cycles, a grant program or programs other than this Program may be audited. However, audits of the Program shall be performed at intervals frequent enough to ensure consistency with good Program management. Also, at any time, the Depart-

ment, FNS or the State agency may at its discretion audit a Program if an audit appears to be warranted. If FNS in the course of Program reviews of State agency operations finds that the efficiency and effectiveness of the State agency's financial management system is in question, FNS may request the State agency to include the Program in the sample for the next audit examination.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of administrative costs and funded from either State or local agency administrative funds.

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(44 U.S.C. 3506)

[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.16 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because the individual has made a complaint or formal allegation, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding.

§ 247.17 Claims.

If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any Program funds provided to a State agency for administrative purposes were, through State agency or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a claim shall be made by FNS against the State agency, and the State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds so misused or diverted. Further, if FNS determines that any part of the money received by a State agency was lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money so lost. Claims for losses or misuse of supplemental foods shall be handled in accordance with § 250.6(m), 7 CFR Part 250—Subchapter B—Food Distribution. The State agency shall have full opportunity to submit evidence, explanations or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

§ 247.18 Closeout procedures.

(a) *Fiscal year closeout reports.* State agencies shall submit preliminary and final closeout reports for each fiscal year or part thereof. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur State agencies shall:

(1) Submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available; and

(2) Submit to FNS, within 90 days after the end of the fiscal year, final fiscal year closeout reports.

(b) *Revised closeout reports.* Revised closeout reports may be submitted at any time. However, FNS shall not be responsible for reimbursing unpaid obligations later than one year after the close of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following closeout procedures for the Program shall be performed in accordance with OMB Circular A-102.

(1) *Termination for cause.* FNS may terminate a State agency's participation under the Program, in whole or in part, whenever FNS determines that the State agency has failed to comply with the conditions prescribed in this part. FNS shall promptly notify the State agency in writing of the termination and the reasons for the termination, including the effective date. A State agency shall terminate a local agency's participation under the Program by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program. When a State agency's participation under the Program is terminated for cause, any payments made to the State agency, or any recoveries by FNS from the State agency, shall be in conformance with the legal rights and liabilities of the parties.

(2) *Termination for convenience.* FNS or the State agency may terminate the State agency's participation under the Program, in whole or in part, when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may terminate the local agency's participation, in whole or in part, under the same conditions. The two parties shall agree upon the termination conditions, including the effective date thereof and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

§ 247.19 Nondiscrimination.

(a) *Requirement.* The State agency shall comply with the requirements of Title VI of the Civil Rights Act of 1964, the FNS Civil Rights Instruction 113-2 and the Department's regulations concerning nondiscrimination (7 CFR Part 15), including requirements of racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency to assure compliance with such policy, to the end that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

(b) *Non-English materials and staff.* Where a significant proportion of the population of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the State agency shall take action to ensure that Program information, except certification forms, is provided to such persons in the appropriate language orally and in writing. The State agency shall ensure that there are bilingual staff members or interpreters available to serve these persons.

(c) *Complaints.* Complaints of discrimination filed by applicants or participants shall be referred to the Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S.D.A., Washington, DC 20250.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.20 Fair hearing procedures.

(a) *Availability of hearings.* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in the denial or termination of benefits to the individual. The State agency shall conform to Program hearing procedures as outlined in this section at all times unless the State has an alternate hearing procedure whereby participants can appeal State or local agency actions. This alternate procedure may be used with FNS approval.

(b) *Notification of appeal rights.* At the time of application each applicant shall be informed of the right to a fair hearing.

At the time of denial or termination of benefits, each individual shall be informed in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(c) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual or the individual's parent, guardian or other representative, that an opportunity to present its case to a higher authority is desired. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(d) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings. Such time limit shall not be less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action to deny or terminate benefits, as required in § 247.7(f)(2).

(e) *Denial or dismissal of request.* A request for a hearing shall not be denied or dismissed unless:

(1) The request is not received within the time limit set by the State agency in accordance with paragraph (d) of this section.

(2) The request is withdrawn in writing by the applicant or a writing by the applicant or a representative.

(3) The applicant or representative fails, without good cause, to appear at the scheduled hearing.

(f) *Continuation of benefits.* Participants who appeal the termination of benefits within the 15 day advance adverse notice period provided by § 247.7(f)(2) shall continue to receive Program benefits until the hearing official reaches a decision. Applicants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.

(g) *Rules of procedure.* The State and local agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedure shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include: the time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the applicant. The procedures shall not be unduly complex or legalistic and the applicant's background shall be taken into consideration.

(h) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall:

(1) Administer oaths or affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Render a hearing decision which will resolve the dispute.

(i) *Conduct of the hearing.* The hearing shall be accessible to the applicant. The State or local agency shall provide the applicant with a minimum of 10 days advance written notice of time and place of the hearing and shall enclose the rules of procedure. The State and local agency shall also provide the applicant or representative an opportunity to:

(1) Examine, prior to and during hearing, the documents and records presented to support the decision under appeal; (2) be assisted or represented by an attorney or other persons; (3) bring witnesses; (4) advance arguments without undue interference; (5) question or refute any testi-

mony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and (6) submit evidence to establish all pertinent facts and circumstances in the case.

(j) *Hearing decisions.* (1) Decisions of the hearing official shall comply with Federal law or regulations and shall be based on facts in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with § 247.13. This record shall also be available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the local agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations. The decision shall become a part of the record.

(3) Within 45 days of the request for the hearing, the applicant or representative shall be notified in writing of the decision and the reasons for the decision in accordance with paragraph (j)(2) of this section. Also, if the decision is in the favor of the applicant and benefits were denied, benefits shall begin within this 45-day time period. If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.

(4) All State and local agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 247.22(d), and provided the names and addresses of participants and other members of the public are kept confidential.

(k) *Judicial review.* If a State level decision upholds the agency action, the State agency shall explain any available State review of the decision and any State rehearing process. If neither are available or have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.21 Management evaluation and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will provide assistance to States in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS shall review audits performed by the State agency to ensure that the Program at both the State and local levels has been included in audit examinations at a reasonable frequency. These evaluations shall include a review of each State agency, including on-site reviews of selected local agencies. These evaluations will measure the State agency's progress toward meeting the objective outlined in its State Plan and compliance with these regulations.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but not be limited to:

(i) Annual monitoring of the operation of all local agencies to evaluate certification procedures, management, nutrition education, civil rights compliance, food storage, inventory accountability, and financial management systems. However, more frequent reviews may be performed as the State agency deems necessary. The State agency shall provide a continuing evaluation of each local agency through on-site reviews of the local agency, reviews of local agency reports including inventory reports, reviews of storage facilities and safeguards for supplemental foods.

(ii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on Program activities, and take positive action to correct deficiencies in Program operations.

(3) The State agency shall require that local agencies establish Program review procedures to be used in reviewing their own operations and those of subsidiaries or contractors.

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[46 FR 6341, Jan. 21, 1981, as amended at 47 FR 746, Jan. 7, 1982]

§ 247.22 Administrative appeal of State agency decisions

(a) *Requirements.* The State agency shall provide a hearing procedure whereby a local agency adversely affected by a State action may appeal the action. The right to appeal shall be granted when the local agency's application to participate is denied, when participation is terminated, when a contract is not renewed by the State agency or when any other adverse action which affects participation is taken. The adverse action shall be postponed until a hearing decision is reached.

(b) *Procedure.* The State agency hearing procedure shall at a minimum provide the local agency:

(1) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing;

(2) The opportunity to present its case;

(3) The opportunity to confront and cross-examine adverse witnesses;

(4) The opportunity to be represented by counsel, if desired;

(5) The opportunity to review the case record prior to the hearing;

(6) An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal finding of fact and conclusions of law; and

(7) Written notification of the decision concerning the appeal, within 60 days from the date of the request for a hearing.

§ 247.23 Miscellaneous provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income to or resources of participants or their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *Statistical information.* FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals. FNS may require the State or local agencies to supply data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon low-income individuals determined to be eligible for Program benefits.

(c) *Confidentiality.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program.

(d) *Public information.* Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont:

U.S. Department of Agriculture, FNS, New England Region, 33 North Avenue, Burlington, Massachusetts 01803.

(2) Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia:

U.S. Department of Agriculture, FNS, Mid-Atlantic Region, One Vahlsing Center, Robbinsville, New Jersey 08691.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee:

U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, NW, Atlanta, Georgia 30309.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin:

U.S. Department of Agriculture, FNS, Midwest Region, 536 South Clark Street, Chicago, Illinois 60605.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas:

U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming:

U.S. Department of Agriculture, FNS, Mountain Plains Region, 2420 West 26th Avenue, Room 430-D, Denver, Colorado 80211.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, Washington:

U.S. Department of Agriculture, FNS, Western Region, 550 Kearney Street, Room 400, San Francisco, California 94108.

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Sec.
250.1 General purpose and scope.
250.2 Administration.
250.3 Definitions.
250.4 Availability of donated foods.
250.5 Eligible distributing agencies.
250.6 Obligations of distributing agencies.
250.7 Disposition of damaged or out-of-condition foods.
250.8 Eligible recipient agencies.
250.9 Eligible recipients.
250.10 Special feeding programs.
250.11 [Reserved]
250.12 Operating expense funds for distributing agencies.
250.13 Miscellaneous provisions.
250.14 Where to obtain information.
250.15 State processing of donated foods.

AUTHORITY: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79-396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91-665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 613c nt); sec. 311, Pub. L. 95-478, 92 Stat 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); (5 U.S.C. 301), unless otherwise noted.

SOURCE: 45 FR 82895, Dec. 16, 1980, unless otherwise noted.

§ 250.1 General purpose and scope.

(a) *Terms and conditions.* This part prescribes the terms and conditions under which foods may be obtained by Federal, State, and private agencies for use in any State in schools, child care institutions, nonprofit summer camps for children, charitable institutions, correctional institutions for minors, nutrition programs for the elderly, and the assistance of needy persons.

(b) *Legislation.* The distribution of commodities is authorized for the stated purposes by the following legislation:

(1) Section 416 of the Agricultural Act of 1949, as amended (hereinafter referred to as "section 416"), which reads in part as follows:

> In order to prevent the waste of commodities whether in private stocks or acquired through price-support operations by the Commodity Credit Corporation before they can be disposed of in normal domestic channels without impairment of the price-support program or sold abroad at competitive world prices, the Commodity Credit Corporation is authorized, on such terms and under such regulations as the Secretary may deem in the public interest: * * * (3) in the case of food commodities to donate such commodities to the Bureau of Indian Affairs and to such State, Federal, or private agency or agencies as may be designated by the proper State or Federal authority and approved by the Secretary, for use in the United States in nonprofit school-lunch programs, in nonprofit summer camps for children, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served. In the case of (3) the Secretary shall obtain such assurance as he deems necessary that the recipients thereof will not diminish their normal expenditures for food by reason of such donation. In order to facilitate the appropriate disposal of such commodities, the Secretary may from time to time estimate and announce the quantity of such commodities which he anticipates will become available for distribution under (3). The Commodity Credit Corporation may pay, with respect to commodities disposed of under this section, reprocessing, packaging, transportation, handling, and other charges accruing up to the time of their delivery to a Federal agency or to the designated State or private agency. In addition, in the case of food commodities disposed of under this section, the Commodity Credit Corporation may pay the cost of processing such commodities into a form suitable for home or institutional use, such processing to be accomplished through private trade facilities to the greatest extent possible. For the purpose of this section the terms "State" and "United States" include

the District of Columbia and any Territory or possession of the United States.* * *

(2) Section 210 of the Agricultural Act of 1956 (hereinafter referred to as "section 210"), which reads in part as follows:

> Notwithstanding any other limitation as to the disposal of surplus commodities acquired through price-support operations, the Commodity Credit Corporation is authorized on such terms and under such regulations as the Secretary of Agriculture may deem in the public interest, and upon application, to donate food commodities acquired through price-support operations * * * to State correctional institutions for minors, other than those in which food service is provided for inmates on a fee, contract or concession basis.

(3) Section 32 of Pub. L. 74-320, as amended (hereinafter referred to as "section 32"), which reads in part as follows:

> There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to * * * (2) encourage the domestic consumption of such (agricultural) commodities or products by diverting them * * * from the normal channels of trade and commerce * * *

(4) Public Law 75-165, as amended, which supplemented section 32 and reads in part as follows:

> In carrying out clause (2) of section 32, the funds appropriated by said section may be used for the purchase * * * of agricultural commodities and products thereof, and such commodities * * * may be donated for relief purposes and for use in nonprofit summer camps for children.

(5) Section 9 of the Act of September 6, 1958 which reads in part as follows:

> Notwithstanding any other provision of law those areas under the jurisdiction or administration of the United States are authorized to receive from the Department of Agriculture for distribution on the same basis as domestic distribution in any State, Territory, or possession of the United States, without exchange of funds, such surplus commodities as may be available pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), and section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431); * * *

(6) Section 6 of the National School Lunch Act, as amended (hereinafter referred to as "section 6"), which reads in part as follows:

> (a) The funds provided by appropriation or transfer from other accounts for any fiscal year for carrying out the provisions of this Act, and for carrying out the provisions of the Child Nutrition Act of 1966, other than section 3 thereof, less (1) not to exceed 3½ per centum thereof which per centum is hereby made available to the Secretary for his administrative expenses under this Act and under the Child Nutrition Act of 1966; (2) the amount apportioned by him pursuant to sections 4 and 5 of this Act and the amount appropriated pursuant to sections 11 and 13 of this Act and sections 4, 5, and 7 of the Child Nutrition Act of 1966; and (3) not to exceed 1 per centum of the funds provided by carrying out the programs under this Act and the programs under the Child Nutrition Act of 1966, other than section 3 * * * shall be available to the Secretary during such year for direct expenditure by him for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this Act and under the Child Nutrition Act of 1966 in accordance with the needs as determined by the local school and service institution authorities. Any school participating in the food service programs under this Act may refuse to accept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year * * * (e) The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meat, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and

> Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent. Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products). Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.
>
> (f) Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966.

(7) Section 9(c) of the National School Lunch Act, as amended, which reads in part as follows:

> (c) School lunch programs under this Act shall be operated on a nonprofit basis. Each school shall, insofar as practicable, utilize in its lunch program commodities designated from time to time by the Secretary as being in abundance, either nationally or in the school area, or commodities donated by the Secretary. Commodities purchased under the authority of section 32 of the Act of August 24, 1935 (49 Stat. 744), as amended, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this Act as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities. The Secretary is authorized to prescribe terms and conditions respecting the use of commodities donated under such section 32, under section 416 of the Agricultural Act of 1949, as amended, and under section 709 of the Food and Agriculture Act of 1965, as amended, as will maximize the nutritional and financial contributions of such donated commodities in such schools and institutions. * * *

(8) Section 402 of the Mutual Security Act of 1954, as amended, which reads in part as follows:

> * * * surplus food commodities or products thereof made available for transfer under this Act (or any other Act) as a grant or as a sale for foreign currencies may also be made available to the maximum extent practicable to eligible domestic recipients pursuant to section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431), or to needy persons within the United States pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c).

(9) Public Law 86-756, as amended, which reads as follows:

> Schools receiving surplus foods pursuant to clause (3) of section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) are authorized to use such foods in training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses.

(10) Section 409 of the Disaster Relief Act of 1974, which reads as follows:

> (a) Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act * * * and to make surplus commodities available pursuant to the provisions of this Act.
>
> (b) The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.
>
> (c) Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act * * * except as they relate to the availability of food stamps in an area affected by a major disaster.

(11) Section 410(b) of the Disaster Relief Act of 1974, which reads as follows:

> The Secretary of Agriculture shall utilize funds appropriated under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

(12) Section 709 of the Food and Agriculture Act of 1965, as amended (hereinafter referred to as section 709), which reads as follows:

> The Secretary of Agriculture is hereby authorized to use funds of the Commodity

Credit Corporation to purchase sufficient supplies of dairy products at market prices to meet the requirements of any programs for the schools (other than fluid milk in the case of schools), domestic relief distribution, community action, and such other programs as are authorized by law, when there are insufficient stocks of dairy products in the hands of Commodity Credit Corporation available for these purposes.

(13) Section 13(h) of the National School Lunch Act, as amended, which reads as follows:

(h) Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is authorized to donate to States, for distribution to service institutions, food available under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) or section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1). Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

(14) Section 8 of the Child Nutrition Act of 1966 which reads in part as follows:

* * * Foods available under section 416 of the Agricultural Act of 1949 (63 Stat. 1058), as amended, or purchased under section 32 of the Act of August 24, 1935 (49 Stat. 774), as amended, or section 709 of the Food and Agriculture Act of 1965 (79 Stat. 1212), may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in their feeding programs under this Act.

(15) Section 311 of the Older Americans Act of 1965, as amended, which reads in part as follows:

(a)(1) Agricultural commodities and products purchased by the Secretary of Agriculture under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) shall be donated to a recipient of a grant or contract to be used for providing nutrition services in accordance with provisions of this title.

(2) The Commodity Credit Corporation shall dispose of food commodities under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) by donating them to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this title.

(3) Dairy products purchased by the Secretary of Agriculture under section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1) shall be used to meet the requirements of programs providing nutrition services in accordance with the provisions of this title.

(4) In donating commodities under this subsection, the Secretary of Agriculture shall maintain an annually programmed level of assistance of not less than * * * 25 cents per meal during fiscal year 1977 and fiscal year 1978, and 30 cents per meal during the three succeeding fiscal years. The amount specified in this paragraph shall be adjusted on an annual basis for each fiscal year after June 30, 1975, to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Among the commodities delivered under this subsection, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates. The Secretary of Agriculture, in consultation with the Commissioner, is authorized to prescribe the terms and conditions respecting the donating of commodities under this subsection.

(b)(1) During each of the fiscal years ending before October 1, 1981, the Secretary of Agriculture shall purchase high protein foods, meat, and meat alternates on the open market, at prices not in excess of market prices, out of funds appropriated under this section, as determined under paragraph (3), for distribution to recipients of grants or contracts to be used for providing nutrition services in accordance with the provisions of this title. High protein foods, meat, and meat alternates purchased by the Secretary of Agriculture under this subsection shall be grown and produced in the United States.

(2) High protein foods, meat, and meat alternates donated under this subsection shall not be considered donated commodities for purposes of meeting the requirement of subsection (a)(4) with respect to the annually programmed level of assistance under subsection (a).

(3) There are authorized to be appropriated such sums as may be necessary in order to carry out the program established under paragraph (1).

(c)(1) Notwithstanding any other provision of law, a State may, for purposes of the programs authorized by this Act, elect to receive cash payments in lieu of donated foods for all or any portion of its project. In any case in which a State makes such an election, the Secretary of Agriculture shall make cash payments to such State in an amount equivalent in value to the donated foods which the State otherwise would have received if such State had retained its commodity distribution.

(2) When such payments are made, the State agency shall promptly and equitably disburse any cash it receives in lieu of commodities to recipients of grants or contracts. Such disbursements shall only be used by such recipients of grants or contracts to purchase United States agricultural commodities and other foods for their nutrition projects.

(3) Nothing in this subsection shall be construed to authorize the Secretary of Agriculture to require any State to elect to receive cash payments under this subsection.

(16) Section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, (hereinafter referred to as "section 4(a)"), which reads as follows:

> Notwithstanding any other provision of law, the Secretary may, during fiscal years 1978, 1979, 1980, and 1981 purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions, supplemental feeding programs wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

(17) Section 14 of the National School Lunch Act, as amended (hereinafter referred to as "section 14"), which reads as follows:

> (a) Notwithstanding any other provision of law, the Secretary, during the period beginning July 1, 1974, and ending September 30, 1984 shall—(1) use funds available to carry out the provisions of section 32 of the act of August 24, 1935 (7 U.S.C. 612c) which are not expended or needed to carry out such provisions to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section, (which may include domestic seafood commodities and their products) for donation to maintain the annually programmed level of assistance for programs carried on under this Act, the Child Nutrition Act of 1966, and Title III of the Older Americans Act of 1965; and (2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), for such donation.
>
> (b) Among the products to be included in the food donations to the school lunch program shall be cereal and shortening and oil products.
>
> (c) The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4) of the Older Americans Act of 1965, as amended, (42 U.S.C. 3045f(a)(4)) or for cash payments in lieu of such donations under section 311(c)(1) of such Act (42 U.S.C. 3045f(d)(1)). There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.
>
> (d) In providing assistance under this Act and the Child Nutrition Act of 1966 for school lunch and breakfast programs, the Secretary shall establish procedures which will—(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately reflected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States; (2) solicit the views of States with respect to the acceptability of commodities; (3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice; (4) provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; (5) make available technical assistance on the use of commodities available under the Act and the Child Nutrition Act of 1966 * * *.
>
> (e) Each State educational agency that receives food assistance payments under this section for any school year shall establish for such year an advisory council, which shall be composed of representatives of schools in the State that participate in the school lunch program. The council shall advise such State agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.
>
> (f) Commodity only schools shall be eligible to receive donated commodities equal in value to the sum of the national average

value of donated foods established under section 6(e) of this Act and the national average payment established under section 4 of this Act. Such schools shall be eligible to receive up to 5 cents per meal of such value in cash for processing and handling expenses related to the use of such commodities. Lunches served in such schools shall consist of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 9(a) of this Act, and shall represent the four basic food groups, including a serving of fluid milk.

(18) Section 17(h) of the National School Lunch Act, as amended, which reads as follows:

(h) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year under section 6(e) of this Act. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(19) Section 12(g) of the National School Lunch Act, as amended, which reads as follows:

(g) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(20) Section 202(a) of the Omnibus Reconciliation Act of 1980, which reads as follows:

For the fiscal year ending September 30, 1981, the national average value of donated foods, or cash payments in lieu thereof, as determined under section 6(e) of the National School Lunch Act, shall be reduced by 2 cents.

(21) Section 202 of Pub. L. 98-8, as amended, reads as follows:

(a) Notwithstanding any other provision of law, in order to complement the domestic nutrition programs, make maximum use of the Nation's agricultural abundance, and expand and improve the domestic distribution of price-supported commodities, commodities acquired by the Commodity Credit Corporation that the Secretary of Agriculture (hereinafter referred to as the "Secretary") determines, in his discretion, are in excess of quantities needed to—

(1) Carry out other domestic donation programs,

(2) Meet other domestic obligations (including quantities needed to carry out a payment-in-kind acreage diversion program),

(3) Meet international market development and food aid commitments, and

(4) Carry out the farm price and income stabilization purposes of the Agricultural Adjustment Act of 1938, the Agricultural Act of 1949, and the Commodity Credit Corporation Charter Act, shall be made available by the Secretary, without charge or credit for such commodities, for use by eligible recipient agencies for food assistance.

(b) Notwithstanding any other provision of law, if wheat stocks acquired by the Commodity Credit Corporation are not available for the purposes of this Act, up to 300,000 metric tons of wheat designated under section 302(b)(1) of the Food Security Wheat Reserve Act of 1980 may be used for the purposes of this Act. Any amount of wheat used from the Food Security Wheat Reserve under this Act shall be replenished by an equivalent quantity of wheat under the provisions of section 302(b) of the Food Security Wheat Reserve Act of 1980 as soon as practicable, but before October 1, 1985.

(Sec. 202, Pub. L. 96-499, 95 Stat. 2599; secs. 802, 808, and 813, Pub. L. 97-35; Title I and secs. 202-208, Pub. L. 98-8)

[45 FR 82895, Dec. 16, 1980, as amended by Amdt. 1, 46 FR 2332, Jan. 9, 1981; 46 FR 26759, May 15, 1981; 47 FR 15985, Apr. 13, 1982; 49 FR 25615, June 22, 1984]

§ 250.2 Administration.

FNS. The Food and Nutrition Service (referred to in this part as FNS) of the U.S. Department of Agriculture shall have responsibility for the program of distribution of food commodities under this part.

§ 250.3 Definitions.

"*Charitable institutions*" means (1) nonpenal noneducational public (Federal, State or local) institutions, (2) nonprofit, tax-exempt, private hospitals, or (3) other nonprofit, noneducational, tax-exempt, private institutions organized for charitable or public welfare purposes, including any institution defined as "school," "service institutions," or "nonresidential child care institution" which is not a commodity-only school or does not participate in any Child Nutrition Program, (National School Lunch Program, Special Milk Program, School Breakfast Program, Summer Food Service Program for Children, Child Care Food Program (Parts 210, 215, 220, 225, and 226, respectively, of this chapter)). For purposes of this paragraph, tax-exempt shall mean exempt from income tax under the Internal Revenue Code, as amended, and a charitable institution shall be considered "noneducational" even though educational courses are given, where such courses are an incident to the primary purpose of the charitable institution.

"*Child nutrition programs*" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, and the Child Care Food Program.

"*Commodities*" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part.

"*Commodity school*" means a school that does not participate in the National School Lunch Program under Part 210 of this chapter but which operates a nonprofit lunch program under agreement with the State educational agency or FNSRO and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of commodities under Part 240 of this chapter for use in processing and handling of the donated foods.

"*Contract value of the donated foods*" means, at the contracting agency's option (a) the Department's cost of acquiring and delivering the donated foods to be processed based on the most recent data provided by the Department on the date a processing contract is signed, or (b) the processor's most recent data documenting the delivered cost of purchased foods meeting or exceeding the donated foods' specifications.

"*Contracting agency*" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"*Department*" means the United States Department of Agriculture or the Commodity Credit Corporation, whichever is donor under the pertinent legislation.

"*Disaster organizations*" means organizations authorized by appropriate Federal or State officials to assist disaster victims.

"*Disaster victims*" means persons who, because of Acts of God or man-made disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"*Discount system*" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contracted value of donated foods contained in the end products.

"*Distributing agencies*" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients. A recipient agency may also be a distributing agency.

"*Distributor*" means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

"*Donated foods*" means foods donated, or available for donation, by the Department under any of the legislation referred to in this part.

"*Emergency*" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, health, and safety or to avert or lessen the threat of a disaster.

"*End product*" means a product containing any amount of donated foods which have been processed.

"*Federal acceptance service*" means the acceptance service provided by (a) the applicable grading branches of the Department's Food Safety and Quality Service (FSQS), (b) the Department's Federal Grain Inspection Service, and (c) the National Marine Fisheries Service of the U.S. Department of Commerce.

"*Fiscal year*" means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"*FNSRO*" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the Department of Agriculture.

"*Food service management company*" means a commerical enterprise or a nonprofit organization which may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.8(b)(3) of this part or in accordance with § 210.8a of the regulations for the National School Lunch Program.

"*Household*" means a group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit, sharing common cooking facilities, and for whom food is customarily purchased in common. It also means a single individual, living alone, who has cooking facilities and prepares food for home consumption.

"*Major disaster*" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974, (42 U.S.C. 5121), above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

"*Needy persons*" means (1) persons serviced by charitable institutions, who, because of their economic status, are in need of food assistance, (2) all the members of a household who are certified as in need of food assistance, and (3) persons who, because of Acts of God or manmade disasters, are in need of food assistance, whether or not they are victims of a major disaster or an emergency as defined in this section.

"*Nonprofit lunch program*" means a food service maintained by a school for the benefit of children, all of the income from which is used solely for the operation or improvement of the food service.

"*Nonprofit summer camps for children*" means nonprofit camps which do not participate in the Summer Food Service Program for Children authorized under section 13 of the National School Lunch Act, as amended, and in which, during the months of May through September, nonprofit feeding services are conducted for children of high school grade and under.

"*Nonresidential child care institution*" means any child care center, day care home, or sponsoring organization (as those terms are defined in Part 226 of this chapter), which participates in the Child Care Food Program authorized under section 17 of the National School Lunch Act.

"*Nutrition program for the elderly*" means a project conducted by a recipient of a grant or contract under Title III or Title VI of the Older Americans Act of 1965, as amended, to assist in meeting the nutritional and social needs of persons aged sixty or older.

"*Performance supply and surety bond*" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"*Processing*" means (1) the conversion of a donated food or donated foods into a different end product or

(2) the repackaging of a donated food or donated foods.

"*Processing fee*" means the amount charged to a contracting agency for a processor's services.

"*Processor*" means a commercial facility, other than a food service management company, which processes donated foods.

"*Recipients*" means needy persons and disaster victims receiving commodities for their own use.

"*Recipient agencies*" means disaster organizations, charitable institutions, nonprofit summer camps for children, school food authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, and nonresidential child care institutions, receiving foods for their own use or for distribution to eligible recipients.

"*Refund application*" means an application by a recipient agency in any form acceptable to a distributing agency and processor which certifies purchase of end products and which, upon forwarding to the processor by the distributing agency, obligates the processor to refund the value of the donated food contained in the end products.

"*Refund system*" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the value of the donated foods contained in the end products.

"*School*" means (1) an educational unit of high school grade or under, except for a private school with an average yearly tuition exceeding $1,500 per child, operating under public or nonprofit private ownership in a single building or complex or buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade;

(2) With the exception of residential summer camps which are eligible to participate in the Summer Food Service Program for Children under Part 225 of this chapter and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care hospitals for chronically ill children; and juvenile detention centers; and

(3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"*School food authority*" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a nonprofit lunch program therein.

"*School year*" means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"*Secretary*" means the Secretary of Agriculture.

"*Service institutions*" means camps or sponsors (as those terms are defined in Part 225 of this chapter) which participate in the Summer Food Service Program authorized under section 13 of the National School Lunch Act.

"*Special needs children*" means children who are emotionally, mentally or physically handicapped.

"*State*" and "*United States*" means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

"*State Agency on Aging*" means: (1) The State agency that has been designated by the Governor and approved by the United States Department of Health and Human Services (DHHS) to administer nutrition programs for the elderly under Title III of the Older Americans Act of 1965, as amended or (2) the Indian Tribal Organization which has been approved by DHHS to administer nutrition programs for the elderly under Title VI of such Act.

"*State correctional institutions for minors*" means institutions, such as reform schools or training schools, operated by a State, which are devoted solely to the rehabilitation and education of minors and are classified under State law as nonpenal in character, and in which food service is not provided for inmates on a fee, contract, or concession basis.

"*State educational agency*" means, as the State legislature may determine: (1) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer) or (2) a board of education controlling the State Deparment of Education.

"*Students in home economics*" means students in regular classes wherein they are taught food preparation, cooking, and serving.

"*Subdistributing agencies*" means agencies performing one or more distribution functions for distributing agencies other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency also may be a recipient agency.

"*Tuition*" means any educational expense required by the school as part of the students' educational program, not including transportation fees for commuting to and from school, and the cost of room and board. The following monies shall not be included when calculating a school's average yearly tuition per child:

(1) Academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and

(2) State, county or local funds provided to schools operating principally for the purpose of educating handicapped or other special needs children for whose education the State, county or local government is primarily or solely responsible. In a school which varies tuition, the average of yearly tuition shall be calculated by dividing the total tuition receipts for the current school year by the total number of students for purposes of determining if the average yearly tuition exceeds $1,500 per child.

"*Welfare agencies*" means public (Federal, State or local) or private agencies offering assistance on a charitable or welfare basis to needy persons who are not residents of an institution, and to Tribal Councils designated by the Bureau of Indian Affairs.

(Secs. 802, 808, and 813, Pub. L. 97-35)

[45 FR 82895, Dec. 16, 1980; 46 FR 26759, May 15, 1981, as amended at 46 FR 41480, Aug. 14, 1981; 47 FR 15985, Apr. 13, 1982; 48 FR 28611, June 23, 1983; 50 FR 37167, Sept. 12, 1985]

§ 250.4 Availability of donated foods.

(a) *Distribution and use of donated foods.* Commodities shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of Part 283 of this chapter. Donated foods not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. However, donated foods may be transferred between recipient agencies with the authorization of the distributing agency if determined to be in the best interest of the distribution program. In areas where a Food Stamp Program is in effect, there shall be no distribution of donated foods to households under this part except:

(1) To authorized Indian reservations; (2) during emergency situations caused by a national or other disaster as determined by the Secretary; and (3) for the purpose of the Commodity Supplemental Food Program.

(b) *Quantities.* (1) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed in furtherance of the objectives of the pertinent legislation.

(2)(i) For each school year the national average value of donated foods to be available to States for distribution to schools participating in the National School Lunch Program (7 CFR Part 210), or, where applicable, cash payments in lieu thereof, shall not be less than 11 cents for each lunch, adjusted on an annual basis as provided in paragraph (b)(5) of this section. Not less than 75 per centum of the food distribution assistance for schools shall be in the form of donated foods.

(ii) For each school year, the national average value of donated foods to be provided to States for distribution to commodity schools shall not be less than the amount specified in paragraph (b)(2)(i) of this section, plus an amount equal to the national average payment established under section 4 of the National School Lunch Act, for each lunch served by such schools: *Provided, however,* That this amount shall be reduced to the extent that FNS provides up to 5 cents per lunch of this value in cash in lieu of donated foods for donated-food processing and handling expenses on behalf of such schools, in accordance with Part 240 of this chapter.

(3) For each school year, the national average value of donated foods to be made available to States for distribution to nonresidential child care institutions, or cash payments in lieu thereof, shall not be less than 11 cents for each lunch and supper, adjusted on an annual basis as provided in paragraph (b)(5) of this section.

(4) For the fiscal year ending September 30, 1981, the quantity of donated foods to be made available to any State for distribution to nutrition programs for the elderly shall be valued at not less than 30 cents for each meal which the State Agency on Aging, in accordance with regulations and guidelines authorized by the Commissioner on Aging, United States Department of Health and Human Services, reports as having been served or, where necessary, estimates will be served within the State during the year, adjusted on an annual basis as provided in paragraph (b)(5) of this section: *Provided, however,* That this quantity shall be reduced to the extent that a State elects to receive cash in lieu of donated foods in accordance with § 250.13(f) of this part.

(5)(i) The value of donated foods, as specified in paragraph (b)(2)(i) of this section to be distributed for lunches in schools and for lunches and suppers in nonresidential child care institutions, or where applicable, the amount of cash payments to be made in lieu of donated foods for such meals, shall be adjusted on an annual basis to reflect changes in the Price Index for Food Used in Schools and Institutions prescribed by section 6(e)(2) of the National School Lunch Act, as amended.

(ii) The value of donated foods to be distributed to nutrition programs for the elderly, or, where applicable, the amount of cash payments to be made in lieu of donated foods, shall be adjusted on an annual basis to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(iii) The adjustments required by paragraphs (b)(5) (i) and (ii) of this section, shall be computed to the nearest one-fourth cent and shall be made effective as of the beginning of each school year for schools and nonresidential child care institutions and as of the beginning of each fiscal year for nutrition programs for the elderly.

(6) The Department may, at its discretion, and consistent with pertinent legislation, restrict distribution of donated foods to one or more classes of recipient agencies or recipients.

(c) *Minimum donations.* Commodities shall be donated only in such quantities as will protect the lowest carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(d) *Allocations.* As commodities become available for donation, the Food Distribution Division, FNS, shall notify distributing agencies regarding the commodities, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular commodity in addition to the general terms and conditions set forth herein. Every attempt shall be made to deliver commodities in accordance with requested schedules. However, the Department shall not be responsible for delay in delivery or for nondelivery of commodities due to any cause.

(e) *Processing and other costs.* The Department shall pay such processing, reprocessing, transporting, handling and other charges accruing up to the time of transfer of title to distributing agencies as is deemed in the interest of the Department.

(f) *Transfer of title.* Title to donated foods shall pass to distributing agencies upon their acceptance of donated foods at time and place of delivery, limited, however, by the obligation of the distributing agency to use such donated foods for the purposes and upon the terms and conditions set forth in this part.

(g) *Availability for demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any commodity donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, for demonstrations or tests relating to the utilization of such commodity by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(h) *Refusal of donated foods by school food authorities.* Any school food authority participating in food service programs under the National School Lunch Act, as amended, may refuse, at the time they are offered, donated foods and other foods offered for delivery for lunches in any school year if such foods cannot be used effectively. The school food authority may receive, in lieu of the refused donated foods, other donated foods to the extent other donated foods are available to the State during the school year: *Provided, however,* That not more than 20 percent of the value of the donated foods offered to a school food authority for lunches during the school year shall be subject to replacement with other available donated foods unless replacement based on the refusals of more than 20 percent of such value is feasible and practical.

(Sec. 202, Pub. L. 96-499, 95 Stat. 2599; secs. 802, 808, and 813, Pub. L. 97-35)

[45 FR 82895, Dec. 16, 1980, as amended at 46 FR 26759, May 15, 1981; 47 FR 15986, Apr. 13, 1982]

§ 250.5 Eligible distributing agencies.

(a) *State and Federal agencies.* Such State and Federal agencies as are designated by the Governor of the State, by the State legislature, and approved by the Secretary shall be eligible to become distributing agencies.

(b) *Private agencies.* Where State distributing agencies are not permitted by law to make distribution to private recipient agencies, or to any class of private recipient agency, private agencies which agree to make distribution of donated foods on a State-wide basis and which apply directly to the Food Distribution Division, FNS, and are approved by the Secretary shall be eligible to become distributing agencies.

(c) *Agreements with Department.* Prior to the inauguration of a distribution program, eligible agencies shall enter into written agreements with the Department which shall incorporate by reference or otherwise the terms and conditions set forth in this part. When requested by the Department an eligible agency shall present evidence of its authority to enter into such agreements.

(Approved by the Office of Management and Budget under control number 0584-0007)

(44 U.S.C. 3506)

[45 FR 82895, Dec. 16, 1980, as amended at 47 FR 745, Jan. 7, 1982]

§ 250.6 Obligations of distributing agencies.

(a) *Determination of eligibility.* Distributing agencies shall determine that recipient agencies or recipients to whom they distribute donated foods are eligible under this part, and shall impose upon public welfare agencies the responsibility for determining that recipients to whom welfare agencies distribute commodities are eligible: *Provided, however,* That the State educational agency or FNSRO shall determine the eligibility under this part of schools and of service institutions participating in the Summer Food Service Program for Children under Part 225 of this chapter.

(b) *Agreements.* Distributing agencies shall enter into agreements with subdistributing agencies, recipient agencies, warehousemen, carriers, or other persons to whom donated foods are delivered under their distribution program. Agreements with subdistributing agencies and recipient agencies shall be in writing, except in those instances where subdistributing agencies are acting as agents for the distributing agencies. All agreements shall contain such terms and conditions as the distributing agency deems necessary to insure that:

(1) The distribution and use of donated foods is in accordance with this part, (2) subdistributing agencies, recipient agencies, warehousemen, carriers, or other persons to whom donated foods are delivered by the distributing agency are responsible to the distributing agency for any improper distribution or use of donated foods, and for any loss of, or damage to, donated foods caused by their fault or negligence, (3) subdistributing agencies and recipient agencies have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution, and (4) subdistributing agencies and recipient agencies will take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss of, or damage to, donated foods. To the extent that bills of lading and warehouse receipts satisfy the above-stated criteria, the distributing agency may consider such documents as appropriate agreements.

(c) *Use of subdistributing agencies.* If distributing agencies use subdistributing agencies to distribute donated foods, the distributing agencies' responsibilities to the Department for overall management and control of the distribution program shall not be delegated to such subdistributing agencies.

(d) *Distribution to charitable institutions.* Distributing agencies shall submit for prior approval by FNS a description of the method or methods by which the distributing agencies will determine the number of needy persons in charitable institutions. The methods so approved shall include, but are not limited to, those which identify the persons, or the number thereof, who do not pay the full charge assessed for the services provided to them or who are unable to pay the full cost of providing such services.

(e) *Distribution to schools.* Prior to making distribution to schools, distributing agencies shall notify each school food authority of its right to refuse delivery of not more than 20 percent of the total value of donated foods offered to it by such agencies for use in nonprofit lunch programs in any school year and to receive other donated foods, if available, in lieu of those refused, in accordance with § 250.4(h). Notification of commodity refusal rights shall be provided by means of a letter or by an addendum to the agreement required by paragraph (b) of this section to each school food authority prior to the beginning of each school year.

(f) *Household distribution.* Distributing agencies, prior to making distribution to welfare agencies or households, shall submit a plan of operation for approval by the appropriate FNS Regional Office. The plan of operation for food distribution to households on all or part of an Indian reservation shall meet the requirements of § 283.5(a) of this chapter. Food distribution to households in the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas shall continue to be subject to the provisions of this paragraph. Such plan shall incorporate the procedures and methods to be used in certifying households as in need of food assistance: in making distribution to households; and in providing a fair hearing to households whose claims for food assistance under the plan are denied or are not acted upon with reasonable promptness, or who are aggrieved by an agency's interpretation of any provision of the plan. No amendment to the plan of operation of a distributing agency shall be made without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. Distributing agencies shall require welfare agencies making distribution to households to conduct distribution programs in accordance with all provisions of the

State plan of operation. As a minimum, the plan shall include the following:

(1) The name of the public welfare agency or agencies which will be responsible for certification of households.

(2) The manner in which donated foods will be distributed, including, but not limited to, the identity of the agency that will distribute donated foods, the storage and distribution facilities to be used and the method of financing.

(3) *The specific criteria to be used in certifying households as in need of food assistance.* The income and resource standards established by each distributing agency for use by welfare agencies in determining the eligibility of applicant households, after October 1979, shall continue to be those standards used as of that date which were incorporated in a plan of operation approved by FNS, unless an amendment to such standard is required or approved by FNS.

(4) The method or methods that will be used to verify the information upon which the certification of eligibility is based, including the kinds of documentary evidence that applicants are required to furnish to obtain certification.

(5) Provisions for periodically reviewing the certification of households to discover any change in their status which would necessitate a change in the determination of eligibility. The eligibility of households shall be reviewed at least every three months, except that such reviews may be made at longer periods, not to exceed 12 months, *Provided* That such longer periods are based upon a determination by the certifying agency that the income and resources available to such households will probably remain essentially unchanged during such period.

(6) Provisions for identifying each person who has been designated to receive donated foods for a household.

(7) Assurance that the distribution of donated foods shall not be used as a means to further the political interest of any individual or party, and that there shall be no discrimination in the distribution of donated foods because of race, color, or national origin.

(8) Assurance that (i) citizenship or durational residence requirements shall not be imposed as a condition of eligibility and (ii) recipients shall not be required to make any payments in money, materials or services, for or in connection with the receipt of donated foods, and that they shall not be solicited in connection with the receipt of donated foods for voluntary cash contributions for any purpose.

(9) The manner in which the distributing agency plans to supervise the program.

(10) Definitions of any terms used which cannot be determined by reference to Webster's New International Dictionary (second edition).

(g) *Quantities requested.* Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(h) *Distribution.* Donated foods shall be distributed only to recipient agencies and recipients eligible to receive them under this part (see §§ 250.8 and 250.9). Distributing agencies shall require that welfare agencies and disaster organizations distribute donated foods only to recipients eligible to receive them under this part. Distribution of donated foods to charitable institutions shall be made based on the number of needy persons served by them, as determined by the method of methods approved by FNS in accordance with paragraph (d) of this section. Distribution of donated foods to schools, service institutions, and nonresidential child care institutions shall be made on the basis of the average daily number of meals to be served which meet the meal type requirements prescribed in the regulations for the National School Lunch Program under Part 210 of this chapter, the Summer Food Service Program for Children under Part 225 of this chapter, and the Child Care Food Program under Part 226 of this chapter, respectively, as evidenced by information provided by the administering State agency or FNSRO by September of each year for schools and nonresidential child care institutions and by June of each year for service institutions, and supplemented subsequently as necessary. Distribution of section 6 commodities shall be limited to those schools, service institutions, and nonresidential child care institutions which participate in such child nutrition programs under this chapter.

(i) *Redonations.* Whenever a distributing agency has any donated food on hand which it cannot efficiently utilize, it shall immediately request the appropriate FNSRO for instructions as to the disposition of such donated foods. Distributing agencies requesting authority to make redonation of any donated foods to the Department shall, upon the Department's request, have such donated foods federally inspected at the distributing agences' expense. Any donated foods which the Department determines are acceptable for redonation shall be moved at the distributing agency's expense to the closest point, within the Food Distribution Division area in which the State is located, where it can be utilized or to a closer point outside the area, if such a transfer is mutually agreed to by the Department and the distributing agency. In those instances in which the distributing agency satisfactorily demonstrates to the Department that the need for any redonation resulted from no fault or negligence on its part, the Department shall assume transportation costs as it determines to be proper. Whenever a redonation is made at the request of the Department, the Department shall pay all transportation and handling costs in connection with such redonation and shall pay to the distributing agency all storage and handling costs accrued on the donated foods at the time of donation, as determined by the Department.

(j) *Distribution charges.* (1) Except as provided in paragraph (j)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (k) of this section.

(2) For the period September 30, 1983, through September 30, 1985, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstance shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited in connection with the receipt of donated foods for any purpose.

(k) *Use of funds accruing in operation of the program.* Funds accruing from the sale of containers, salvage of donated foods, distribution charges, insurance, or recoveries from loss or damage claims (which are authorized under paragraph (m) of this section to be expended for program purposes) shall be used only for the payment of expenses of the food distributing program, including transportation, storage and handling of donated foods, salaries of persons directly connected with the program, and other administrative expenses. The receipt and expenditure of funds so accrued shall be reviewed by distributing agencies periodically, but at least once each fiscal year, to determine that fund balances are not in excess of program needs. If excess funds accumulate by reason of collection of distribution charges, such excess funds shall be used to reduce such charges or shall be returned to contributors. If excess funds accrue from the sale of containers, salvage of donated foods, insurance, or recoveries from loss or damage of claims, such funds shall be (1) used to reduce distribution charges, (2) used to purchase additional foods, or (3) paid to the Department. The distributing agency shall impose upon subdistributing agencies and recipient agencies similar provisions for the use of such funds accruing in the operation of their programs.

(l) *Normal food expenditures.* Donated foods shall not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods, except that this provision shall not apply to the distribution of section 6 donated foods.

(m) *Improper distribution or loss of or damage to donated foods.* If a distributing agency improperly distributes or uses any donated foods, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, the distributing agency shall, at the Department's option, (1) replace the donated food in its distribution program in kind, or, in the case of section 6 donated foods, where replacement in kind may not be practicable, with other similar foods, or (2) pay to the Department the value of the donated food as determined by the Department. Upon the happening of any event creating a claim in favor of a distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier, or other person, for the improper distribution, use, or loss of, or damage to, a donated food, the distributing agency shall take action to obtain recovery. All amounts collected by such action shall, at the Department's option, be used in accordance with the provisions of paragraph (m) (1) or (2) of this section, or, except for amounts collected on claims involving section 6 donated foods, shall be expended for program purposes in accordance with the provisons of paragraph (k) of this section. Determinations by a distributing agency that a claim has or has not arisen in favor of the distributing agency against a subdistributing agency, recipient agency, warehouseman, carrier, or other person, shall, at the option of the Department, be approved by the Department prior to the distributing agency's taking action thereon. Where prior approval has not been given by the Department, a distributing agency's claim determinations shall be subject to review by the Department. In the case of an inventory shortage, when the loss of any one commodity does not exceed 1 percent of the total quantity of the donated food distributed or utilized from any single storage facility during the Federal fiscal year in which the loss occurred, or during the period for which an audit was conducted by representatives of the Department, or, if approved by FNS, during the period for which an audit was conducted by the distributing agency, if the distributing agency finds that:

(i) The cause of the shortage cannot be established, (ii) the lost donated foods were held in non-commercial storage or other facilities owned or operated by the distributing agency, a subdistributing agency, or a recipient agency, and (iii) there is no indication that the loss was the result of negligence or continued inefficiency in operations, the distributing agency need not take any further claims action, but the factual basis for not taking further claims action shall be subject to review by the Department. Furthermore, distributing agencies shall not be required to file or pursue a claim for a loss which does not exceed an amount established by State law, regulations, or procedure as a minimum amount for which a claim will be made for State losses generally, but no such claim shall be disregarded where there is evidence of violation of Federal or State statutes. Distributing agencies which fail to pursue claims arising in their favor, or fail to provide for the right to assert such claims, or fail to require their subdistributing agencies and recipient agencies to provide for such rights shall be responsible to the Department for replacing the donated foods or paying the value thereof in accordance with the provisions of paragraph (m) (1) or (2) of this section. Distributing agencies which pursue claims arising in their favor, but fail to obtain full restitution shall not be liable to the Department for any deficiency unless the Department determines that the distributing agency fraudulently or negligently failed to take reasonable action to obtain restitution. The Department may, at its option, require assignment to it of any claim arising from the distribution of donated foods.

(n) *Processing of donated foods.* Distributing agencies, subdistributing agencies, and recipient agencies may employ commercial facilities to process donated foods by converting them into different end products or by repackaging them when such processing is contracted for and performed in accordance with the provisions of § 250.15 of this part. For the fiscal year beginning October 1, 1981, and subsequent fiscal years, distributing agencies, prior to entering into or approving processing contracts, shall submit to and receive from FNS approval of the State Plan of Operations required by paragraph (w) of this section, and one or more standard form contracts meeting the requirements of § 250.15(d) of this part, to be required for use within the State.

(o) *Containers.* When containers in which donated foods are received are disposed of by sale, the proceeds of such sale shall be used solely in accordance with the provisions of paragraph (k) of this section, and subdistributing agencies and recipient agencies shall be required to use proceeds from the sale of containers solely for program purposes.

(p) *Personnel.* Adequate personnel, including supervisory personnel, shall be provided to review distribution programs and to effect distribution in accordance with the requirements of this part.

(q) *Facilities.* Facilities for the handling, storage, and distribution of donated foods shall be such as to properly safeguard against theft, spoilage, and other loss. Subdistributing agencies and recipient agencies shall be required to provide similar facilities.

(r) *Records.* (1) Accurate and complete records shall be maintained with respect to the receipt, disposal, and inventory of donated foods including (i) end products processed from donated foods and (ii) the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency. Such records shall also be maintained with respect to the receipt and disbursement of funds arising from operation of the distribution program, including the determination as to the amount of payments to be made by any processor, as defined in § 250.3, upon termination of processing contracts.

(2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with § 250.15(l) of this part.

(3) Distributing agencies shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities in accordance with § 250.4(h) of this part and shall require that school food authorities also maintain such records of refusals.

(4) Any processor or other entity which contracts with a distributing agency, subdistributing agency or recipient agency to process, repackage, or prepare any donated foods shall be required to keep accurate and complete records with respect to the receipt, disposal, and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which will permit an accurate determination of the donated-food inventory. Where the contract value of donated foods, as defined in § 250.3, is lower than the Department's cost of acquiring and delivering such foods on the date a processing contract is signed or subsequently revised, the processor shall be required to maintain records to substantiate the lower delivered cost. In addition, the processor shall be required to keep formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency.

(5) All recipient agencies shall be required to keep accurate and complete

records showing the data and method used to determine the number of eligible persons served by that agency.

(6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, or other entity to maintain records required by this section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.6(m) of this part. All such records shall be made available for inspection and review upon request by FNS or by the appropriate distributing agency and shall be retained for a period of three years from the close of the Federal fiscal year to which they pertain. However, FNS may, by written notice, require longer retention of any records necessary for resolution of an audit or of any litigation.

(s) *Reports.* Distributing agencies shall submit (1) monthly reports to the FNS Regional Office covering the receipt and distribution of commodities, (2) quarterly processing inventory reports in accordance with § 250.15(p) of this part, and (3) such other reports covering distribution operations in such form as may be required from time to time by the Department.

(t) *Right of inspection and audit.* Representatives of the Department may inspect donated foods in storage, or the facilities used in the handling or storage of such donated foods, and may inspect and audit all records, including financial records, and reports pertaining to the distribution of donated foods and may review or audit the procedures and methods used in carrying out the requirements of this part at any reasonable time. Subdistributing agencies, recipient agencies, and persons contracting to repackage, process, or prepare donated foods shall be required to permit similar inspection and audit by the Department.

(u) *Complaints.* Distributing agencies shall investigate promptly complaints received in connection with the distribution or use of donated foods, correct any irregularities disclosed, and promptly report each instance of serious irregularity to the Department. Distributing agencies shall maintain on file evidence of such investigations and actions. The Department reserves the right to make investigations and shall have the final determination as to when a complaint has been properly adjusted.

(v) *Demurrage.* Demurrage or other charges which accrue after a car or truck has been placed for unloading by the delivering carrier, or which accrue because placement of a car or truck is prevented, shall be borne by the distributing agency, except that demurrage or other charges shall be borne by the Department where such charges accrue because of actions by the Department and without the fault or negligence of the distributing agency.

(w) *State plan of operations for processing.* (1) Not later than 90 days after publication of these final rules and not later than May 15 of each subsequent fiscal year, each distributing agency shall submit to FNS for approval a State Plan of Operations for Processing. FNS shall provide written approval or denial of the State Plan for Processing or amendment within 45 days of receipt. The State Plan for Processing and all amendments shall be signed by the Chief Officer of the distributing agency.

(2) For the fiscal year beginning October 1, 1981, the plan shall meet the requirements of § 250.15(b).

(Approved by the Office of Management and Budget under control number 0584-0007)

(44 U.S.C. 3506; E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b), Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506(c)); Title I and secs. 202-208, Pub. L. 98-8)

[45 FR 82895, Dec. 16, 1980; 46 FR 26759, May 15, 1981, as amended at 46 FR 41481, Aug. 14, 1981; 47 FR 745, Jan. 7, 1982; 48 FR 29123, June 24, 1983; 49 FR 25616, June 22, 1984]

§ 250.7 Disposition of damaged or out-of-condition foods.

Donated foods which are found to be damaged or out-of-condition and are declared unfit for human consumption by Federal, State, or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. Such instructions may direct that unfit donated foods be (a) sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department, (b) sold in a manner prescribed by the Department with the proceeds thereof retained for use in accordance with the provisions of § 250.6(k), (c) used in such a manner as will serve a useful purpose as determined by the Department, or (d) destroyed in accordance with applicable sanitation laws and regulations. Dispositions under the provisions of paragraph (b) of this section shall not apply to section 6 donated foods. Upon a finding by the Department that donated foods are unfit for human consumption at the time of delivery to the distributing agency and when the Department or appropriate health officials require that such donated foods be destroyed, the Department may pay to the distributing agency any expenses incurred in connection with such donated foods as determined by the Department. The Department may in any event repossess damaged or out-of-condition donated foods.

§ 250.8 Eligible recipient agencies.

(a) *Schools and school food authorities.* Schools or school food authorities which participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. Schools or school food authorities which participate in the School Breakfast Program under Part 220 of this chapter shall not, beginning January 1, 1981, receive donated-food assistance based upon the number of breakfasts served under that program, except that those schools or school food authorities may continue to receive donated foods under section 8 of the Child Nutrition Act of 1966. Schools or school food authorities receiving donated foods under this part may use such foods for the purpose of training students in home economics, including college students if the same facilities and instructors are used for training both high school and college students in home economics courses.

(b) *Charitable institutions.* (1) Charitable institutions which maintain an established feeding operation on a regular basis as an integral part of their normal activities are eligible to receive donated foods under section 416, section 32, section 709, and section 4(a). Charitable institutions receiving such donated foods shall not discriminate against any person receiving food because of race, color, or national origin.

(2) Private charitable institutions, other then hospitals, must be established for the purpose of providing continuing services in the same place without marked change and, at the Department's option, approved by a public welfare agency as meeting a definite need in the community by administering to needy persons.

(3) Charitable institutions which desire to receive donated foods under this part may employ food service management companies to conduct their feeding operations, provided that the charitable institutions enter into written contracts with such companies. Contracts between charitable institutions and food service management companies shall expressly provide that:

(i) Any donated foods received by the charitable institutions and made available to the food service management company shall insure only to the benefit of the charitable institution's feeding operation and shall be utilized therein; and

(ii) The books and records of the food service management company pertaining to the feeding operation of the charitable institution shall be available for a period of three years from the close of the Federal fiscal year to which they pertain for inspection and audit by representatives of the distributing agency, of the Department, and of the General Accounting Office at any reasonable time and place.

(c) *Summer camps.* (1) Nonprofit summer camps for children are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a) if the distributing agency determines that the number of adults participating in camp activities as compared with the number of children under 18 years of age so participating is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 18 years of age and over including program directors, counselors, and others who engage in recreational, educational, and direct administrative functions are considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance, or similar support functions are not considered as adults participating in summer camp's activities. In no event are persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services to be considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

(2) Nonprofit summer camps for children which desire to receive donated foods under this part may employ food service companies to conduct their feeding operations provided that such services are contracted for on the same basis as is stated in paragraph (b) of this section.

(d) *State agencies.* State agencies which make distribution to needy persons in households are eligible to receive foods under section 416, section 32, section 709 and section 4(a), provided they serve households certified in accordance with a plan of operation approved by FNS, as required by § 283.5(a) of this chapter or with respect to households in the Trust Territory of the Pacific Islands, as required by § 250.6(e) of this part.

(e) *Disaster organizations.* Disaster organizations are eligible to receive donated foods under section 416, section 32, section 709 and section 4(a) for distribution to disaster victims. Distributing agencies making distribution to such organizations shall immediately inform the appropriate FNSRO thereof. Such organizations shall be eligible for the duration of the disaster, as determined by the Secretary, but they may make distribution of federally donated foods to households in areas where the Food Stamp Program is in operation only so long as the Secretary finds that the commercial channels of food distribution have been disrupted because of any emergency situation caused by a national or other disaster.

(f) *State correctional institutions for minors.* State correctional institutions for minors are eligible to receive commodities under Part 210.

(g) *Service institutions.* Service institutions which participate in the Summer Food Service Program for Children under Part 225 of this chapter are eligible to receive commodities under section 416, section 32, section 709, section 6, and section 14.

(h) *Nutrition programs for the elderly.* Nutrition programs for the elderly are eligible to receive donated foods under section 416, section 32, section 709, and section 14. The distributing agency shall allocate foods to nutrition programs for the elderly within a State in accordance with the needs prescribed by the State Agency on Aging pursuant to the current regulations and guidelines of the Commissioner on Aging. If a nutrition program for the elderly employs a food service company to conduct its feeding operation, the provisions of paragraph (b)(3) of this section shall be applicable.

(i) *Nonresidential child care institutions.* Nonresidential child care institutions which participate in the Child Care Food Program under Part 226 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14.

(Approved by the Office of Management and Budget under control number 0584-0007)

(Sec. 202, Pub. L. 96-499, 95 Stat. 2599; 44 U.S.C. 3506; secs. 802, 808, and 813, Pub. L. 97-35)

[45 FR 82895, Dec. 16, 1980, as amended at 46 FR 2332, Jan. 9, 1981; 46 FR 26759, May 15, 1981; 47 FR 745, Jan. 7, 1982; 47 FR 15986, Apr. 13, 1982]

§ 250.9 Eligible recipients.

(a) *Needy persons in households.* Needy persons in households are eligible to receive foods donated under section 416, section 32, section 709, and section 4(a), provided the household is certified in accordance with the plan of operation approved by FNS, as required by § 283.5(a) of this chapter or, with respect to households in the Trust Territory of the Pacific Islands and the Northern Marianas, as required by § 250.6(e) of this part.

(b) *Disaster victims.* Disaster victims are eligible to receive commodities under section 416, section 32, section 709, and section 4(a).

§ 250.10 Special feeding programs.

In situations of distress in which needs for food assistance cannot be met under other provisions of this part, any distributing agency may, upon request to and approval by the Secretary, distribute donated foods to any institution, or to any association of persons engaged in charitable activities, for use in conducting special group-feeding programs on a temporary basis for persons in need of such food assistance. The distributing agency, and any such institution or association, shall conduct any distribution under this section in accordance with such instructions as the Secretary may specify, and any such institution or association shall give to the distributing agency an assurance that feeding programs will be conducted in accordance with the instructions.

§ 250.11 [Reserved]

§ 250.12 Operating expense funds for distributing agencies.

(a) *Purpose.* The Department will make payments to distributing agencies to assist them in meeting operating expenses incurred in administering food distribution for needy persons in households. "Distributing agency(ies)" for the purposes of this section shall refer only to the distributing agency for the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas, and payment of administrative funds for food distribution to households on Indian reservations shall be made under the provisions of § 283.9 of this chapter.

(b) *Use of funds.* Distributing agencies shall make every reasonable effort to insure the availability of a food distribution program for needy persons in households residing in the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas and shall assign priority, in the use of any funds received under this section, to accomplish that objective. Any remaining funds shall be used to expand and improve distribution to households. Such funds may be used for any costs which are not disallowed under Federal Management Circular 74-4 (a copy of which may be obtained from FNS) and which are incurred in distributing donated foods to households, including determining eligibility of recipients, except for the purchase cost of land and buildings. In no event shall such funds be used to pay any portion of any expenses if reimbursement or payment therefor is claimed or made available from any other Federal source.

(c) *Apportionment of funds.* The Department shall apportion the funds available for the purpose of this section for any fiscal year among distributing agencies which are responsible for food distribution programs to households. The amount of funds apportioned to each distributing agency shall be such amount as FNS determines is necessary to effectuate the purposes of this section. The apportionment of funds under this paragraph shall not be regarded as conveying to any distributing agency a vested right to any fixed amount of funds.

(d) *Notification of availability.* As soon as practicable after funds for the purpose of this section are made available, written notification of the amount of funds apportioned and the period for which they are available shall be given to the distributing agency for which such funds are available.

(e) *Payments of funds.* Upon receiving notification of the amount of funds available to it, each distributing agency shall advise FNS of the amount estimated to be required for the fiscal year. FNS shall, if it concurs, issue a Letter of Credit to the appropriate Federal Reserve Bank in favor of the distributing agency. The distributing agency shall obtain funds needed through presentation by designated officials of a Payment Voucher on Letter of Credit to a local commercial bank for transmission to the appropriate Federal Reserve Bank, in accordance with procedures prescribed by FNS and approved by the U.S. Treasury Department. The distributing agency shall draw only such funds as are needed to pay claims certified for payment and shall use such funds without delay to pay the claims.

(f) *Agreements.* Each distributing agency which desires to receive funds under this section shall execute and submit to FNSRO a letter of acceptance agreeing to:

(1) Expend any funds received solely for the purpose of this section; (2) furnish reports under this part; and (3) amend the existing agreement between the distributing agency and the Department to incorporate contractual provisions required in Government contracts, including the Equal Opportunity clause (section 202 of Executive Order 11246 of September 24, 1965) and provisions required by the Contract Work Hours Standards Act (40 U.S.C. 327 through 330) and the Service Contract Act of 1965 (41 U.S.C. 351 through 357).

(g) *Records, reports, audits.* Distributing agencies shall (1) maintain, and retain for 3 years from the close of the Federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under this section, (2) keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this section, and (3) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records and accounts at any reasonable time. Distributing agencies shall submit monthly reports to FNS on Form FNS-60 concerning the obligations, expenditure and status of funds received under this section. In addition, distributing agencies receiving funds under this section shall submit any other reports in such form as may be required from time to time by the Department.

§ 250.13 Miscellaneous provisions.

(a) *Sanctions.* Any distributing agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in any distribution program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(b) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity-related funds, assets, or property in child nutrition programs.* Notwithstanding § 250.4(f) of this part concerning transfer of title to commodities, whoever embezzles, willfully misapplies, steals, or obtains by fraud, commodities donated for use in any program, or any funds, assets, or property deriving from such donations or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to, funds accruing from the sources identified in § 250.6(k) of this part, commodities which have been processed into different end products as provided for by § 250.6(n) of this part, and the containers in which commodities have been received from the Department. Distributing agencies shall immediately notify FNSRO of any suspected violation of section 12(g) or section 4(c) of the National School Lunch Act to allow the Department, in conjunction with the U.S. Department of Justice, to determine whether Federal criminal prosecution under section 12(g) or section 4(c) is warranted. Prosecution of violations under section 12(g) or section 4(c) by the Federal Government shall not relieve any distributing agency of its obligations to obtain recovery for improperly distributed or lost commodities, as required by § 250.6(m) of this part.

(c) *Distributing agency requirements.* Distributing agencies may impose additional requirements for participation that are not inconsistent with the provisions of this part, except that this provision shall not apply to participation by households on all or part of an Indian reservation under Part 283[1] of this chapter.

(d) *Nondiscrimination.* Distributing agencies and recipient agencies are subject to the Department's regulations effectuating Title VI of the Civil Rights Act of 1964 (Part 15 of this title) to the end that no persons in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Department.

(e) *Persons sharing common food facilities.* It shall not be deemed a failure to comply with the provisions of this part if recipient agencies serve meals containing donated foods to persons other than those who are eligible under this part, when such persons share common preparation, serving or dining facilities with eligible persons (needy persons, disaster victims, children) and one of the following is true:

(1) Such other persons are common beneficiaries with the eligible persons of the program of the recipient agency, or (2) such other persons are few in number compared to the eligible persons and receive their meals as an incident of their service to the eligible persons. Such other persons include, but are not limited to, teachers, disaster relief workers, and staff members.

Nothing in this paragraph shall be construed as authorizing allocation or issuance of donated foods to recipient agencies in greater quantity than that authorized for the assistance of persons eligible under this part, or as relieving the recipient agency of the responsibility for purchasing a volume of food which is at least adequate to feed all persons who are not eligible under this part.

(f) [Reserved]

(g) *Cash in lieu of commodities for nutrition programs for the elderly.* (1) Any State Agency on Aging may, for the purposes of the programs authorized by Titles III and VI of the Older Americans Act of 1965, as amended, elect to receive cash payments in lieu of all or any portion of the donated foods that would otherwise be received under § 250.4(b)(4) of this part during the Federal fiscal year.

(2) When such an election is made, it shall be binding on the State for that fiscal year, and the Secretary shall make cash payments to such State equivalent in value to the donated foods it otherwise would have received. Advance cash payments to such State shall be made for each Federal fiscal quarter by means of Letters of Credit issued by FNS through the appropriate U.S. Treasury Regional Disbursing Office or, where applicable, by means of U.S. Treasury checks in favor of the State Agency on Aging, based on the best data available to FNS at the time as to the number of meals to be served within the State during that fiscal quarter in nutrition programs for the elderly.

(3) The State Agency on Aging desiring to receive funds under this paragraph shall enter into a written agreement with FNS to:

(i) Promptly and equitably disburse any cash it receives in lieu of donated foods to nutrition programs for the elderly after consideration of the needs of such programs and the availability of other resources, including any donated foods available under § 250.4(b)(4) of this part; (ii) establish such procedures as may be necessary to ensure that such disbursements are used by nutrition programs for the elderly solely for the purpose of purchasing U.S. agricultural commodities and other foods for their feeding operations; (iii) maintain and retain for 3 years from the close of the Federal fiscal year to which they pertain complete and accurate records of (A) all amounts received and disbursed under this paragraph and (B) the manner in which consideration was given to the needs and resources as required by paragraph (g)(3)(i) of this section; and (iv) permit representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy such records at any reasonable time.

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[1] **Editorial Note:** At 47 FR 14137, Apr. 2, 1982, Part 283 was redesignated as Part 253.

(h) *Cash in lieu of donated foods for child nutrition programs in a State which has phased out its commodity distribution facilities.* Where a State has phased out its commodity distribution facilities prior to July 1, 1974, such State may, in accordance with Part 240 of this chapter, elect to receive cash payments in lieu of donated foods for use in programs conducted under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended.

(i) *Program monitoring.* (1) Distributing agencies shall monitor and review their operations under this part to ensure compliance with the provisions of this part and with any applicable instructions of FNS.

(2) State Agencies on Aging which receive cash payments in lieu of donated foods in accordance with the provisions of paragraph (f) of this section shall monitor use of such cash after disbursement to nutrition programs for the elderly to ensure that the amounts so received are expended solely for the purchase of U.S. agricultural commodities and other foods for such programs.

(Sec. 802, 808 and 813, Pub. L. 97-35; Title I and secs. 202-208, Pub. L. 98-8)

[45 FR 82895, Dec. 16, 1980; 46 FR 26759, May 15, 1981, as amended at 46 FR 41482, Aug. 14, 1981; 47 FR 15986, Apr. 13, 1982; 48 FR 19016, Apr. 26, 1983]

§ 250.14 Where to obtain information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

(a) New England Region, Food and Nutrition Service, USDA, 34 Third Avenue, Burlington, Massachusetts 01803, for the following States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

(b) Mid-Atlantic Region, Food and Nutrition Service, USDA, One Vahlsing Center, Robbinsville, New Jersey 08691, for the following States: Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia.

(c) Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street, NW, Atlanta, Georgia 30309, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(d) Midwest Region, Food and Nutrition Service, USDA, 536 South Clark Street, Chicago, Illinois 60605, for the following States: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

(e) Mountain Plains Region, Food and Nutrition Service, USDA, 2420 West 26th Avenue, Room 400-D, Denver, Colorado 80211 for the following States: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

(f) Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5-D-22, Dallas, Texas 75202, for the following States: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

(g) Western Region, Food and Nutrition Service, USDA, 550 Kearney Street, Room 400, San Francisco, California, 94108, for the following States: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory, Commonwealth of the Northern Marianas and Washington.

§ 250.15 State processing of donated foods.

(a) *Purpose.* (1) This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods and prescribed the minimum requirements to be included in such contracts.

(2) This section does not pertain to food service management companies utilizing donated foods in the preparation of meals.

(b) *State plan of operations for processing.* Each distributing agency wishing to enter into or approve processing contracts shall have an approved State Plan of Operations for Processing required by § 250.6(w) of this part. Approval of the plan shall be prerequisite to approval by the distributing agency of processsing contracts entered into after the date this section becomes effective. For fiscal year 1982, State distributing agencies may approve contracts prior to approval of the State Plan for Processing provided that the terms and conditions of the contract are in compliance with § 250.15(d) of this part.

(1) The State Plan of Operations for Processing shall, as a minimum, include the following:

(i) The methods by which end products are delivered to recipient agencies.

(ii) A copy of the standard processing contract(s) for use within the State.

(iii) The manner in which the distributing agency will monitor processing activities, which shall include (A) the frequency of onsite reviews of processors and contracting agencies planned for the next fiscal year; (B) procedures for reducing any excess inventories of donated foods among processors in accordance with paragraph (o) of this section, and (C) the methods by which the distributing agency will maintain equitable distribution of end products containing donated foods to recipient agencies eligible to receive such foods, in accordance with § 250.6(h) of this part.

(iv) If the distributing agency is not also the administering State agency for child nutrition programs, the manner in which the distributing agency will cooperate with the administering State agency in accordance with paragraph (q) of this section.

(2) Distributing agencies may submit for approval a revised processing State Plan of Operations for Processing or amendments thereto at any time.

(c) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible agencies through its own distribution system.

(2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may participate in such a processing contract by virtue of the distributing agency/recipient agency agreement required by § 250.6(b) of this part. Under this arrangement processors (i) shall be required to utilize a refund system when they arrange for end products to be sold indirectly to recipient agencies through a distributor unless another system is permitted in accordance with paragraph (f) of this section, (ii) may, with the approval of the distributing agency, utilize either a discount or a refund system when they sell end products directly to recipient agencies or (iii) distributing agency may also allow, with written concurrence from the FNSRO, any other system that can demonstrate and insure proper accountability.

(3) A subdistributing agency or recipient agency may also enter into processing contracts with a processor under arrangements similar to those described in paragraph (c) (1) or (2) of this section, provided that the contract has been approved by the distributing agency in accordance with paragraph (m) of this section.

(d) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form approved by FNSRO and shall terminate no later than one year after they have been approved. However, contracts may be renewed for additional periods of not more than one year by mutual agreement of all parties and upon written approval by the distributing agency, provided that contract performance has been satisfactory.

(2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State and local laws.

(3) The contract shall be signed by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract.

(ii) In a partnership, a partner shall sign the contract.

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) As a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor.

(ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be at least 100 percent.

(iii) The contract value per pound of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, weight or measure of the end products to be delivered.

(iv) A provision for (A) termination of the contract upon thirty days' written notice by the contracting agency or the processor and (B) immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor.

(v) In the event of contract termination, a provision for disposition of donated foods and end products in processor's inventories or payment of funds in accordance with paragraph (k) of this section.

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraphs (h) and (i) of this section.

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (q) of this section shall be delivered only to recipient agencies eligible to receive such foods.

(viii) Provisions that the processor shall:

(A) Fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains fully accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (l) of this section;

(B) Furnish to the contracting agency prior to the delivery of any donated foods for processing any such document or assurance as is required by the contracting agency to protect itself from liability for the donated foods. The contracting agency may require a performance supply and surety bond, an irrevocable letter of credit payable in an amount acceptable to the distributing agency, an escrow account in an amount acceptable to the distributing agency, or any other means of protecting itself since the distributing (contracting) agency is held liable by FNS for any donated foods provided to a processor.

(C) Use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) Apply as a credit against the processing fee or return to the contracting agency (*1*) any funds received from the sale of containers, and (*2*) the market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) Substitute donated foods with commercially purchased foods only in accordance with paragraph (g) of this section;

(F) Meet the requirements of paragraph (j) of this section for labeling end products;

(G) Maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.6(r) of this part; and

(H) Submit processing performance reports in accordance with paragraph (n) of this section.

(ix) A provision that approval of the contract by the distributing agency shall not obligate that agency or the Department to deliver donated foods for processing.

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(e) *End products sold by processors.* When recipient agencies will pay the processor for end products, the contract shall include (1) the processor's established wholesale price schedule for quantity purchases of specified units of end products, (2) an assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency and (3) a provision that the distributing agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(f) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under a refund system. The processor shall make refund payments to such agencies in accordance with paragraph (l) of this section. A distributing agency may permit the use of any other system that can demonstrate and ensure proper accountability, with written concurrence from the FNSRO, for end products sold by distributors.

(g) *Substitution of donated foods with commercial foods.* The processing contract may provide that the processor may substitute for donated foods a like quantity of the same foods of equal or better quality. If such a provision is included, the contract shall stipulate that (1) only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, soybean oil, spaghetti, and such other foods as FNS specifically approves may be substituted and (2) all components of commercial foods substituted for those donated must be of domestic origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service. When there is substitution in accordance with this paragraph the donated foods may be utilized by the processor in his own commercial product but shall not otherwise be sold or disposed of in commercial channels. The State distributing agency may approve written requests by processors for additional substitution of donated foods, with the exception of meat or poultry items. The processor must demonstrate and ensure in the written request that the commercial foods substituted are of equal or superior quality to the donated foods supplied and are of domestic origin. Such documentation must be maintained by both parties in accordance with § 250.6(r). Upon approval by the distributing agency, copies of processor requests for additional substitution of commodities shall be forwarded to the regional office. The applicable Federal acceptance service, shall, upon request, determine if the quality analysis meets the requirement set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods, and when donated commodities are non-substitutable, insure against unauthorized substitutions, and verify that quantities of donated foods utilized are as specified in the contract.

(h) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection program. If the value of the donated meat or poultry items to be processed under any contract at any one time is $10,000 or more, the processing must be performed under Food Safety and Quality Service (FSQS) acceptance service grading. Under no circumstances shall the processor set up processing runs for the purpose of circumventing this requirement. The cost of this service shall be borne by the processor. In the event that an FSQS inspector is not available or that a school food authority needs product produced on short notice, the State distributing agency may provide the processor with written authority to defer FSQS acceptance service for the specific instance. The processor shall retain all such distributing agency notices on file as part of its production records.

(i) *Certification by acceptance service.* (1) When donated foods (other than meat and poultry) that are not substitutable under paragraph (g) of this section are processed, all processing activities shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service.

(2) Contracting agencies may require that end products processed from substitutable donated foods shall also be subject to such acceptance and certification. In the case of substitutable donated foods, the contracting agency requiring Federal acceptance service should consider the dollar value of the donated foods delivered to the processor.

(3) When contracting agencies require certification in accordance with paragraph (i) (1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and value of the donated foods and anticipated volume of end products to be processed. The cost of this service shall also be borne by the processor.

(j) *Labeling end products.* (1) Except when end products contain donated foods that are substitutable under paragraph (g) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies."

(2) Labels on all end products shall meet applicable Federal labeling requirements.

(3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Quality Service of the Department, or the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(k) *Termination of processing contracts.* (1) When contracts are terminated (i) at the request of a processor, where there has been no fault or negligence on the part of the contracting agency, or (ii) at the contracting agency's request, where there has been noncompliance on the part of the processor with the terms or conditions of the contract, or if any right thereunder in favor of the contracting agency is threatened or jeopardized by the processor, the processor shall at the option of the contracting agency and FNS:

(A) When feasible and with the concurrence of any affected distributing agency(ies), transfer all donated food inventories to other distributing agency(ies) with which the processor has contracted;

(B) Return all donated foods unaccounted for or replace them with a like quantity of the same foods of equal or better quality as certified in accordance with paragraph (g)(2) of this section and return such purchased foods at the processor's expense to a destination designated by the distributing agency; or

(C) Pay the distributing agency an amount equal to the Department's cost, based on the most recent data provided by the Department, as of the date of termination, of replacing the foods which cannot be returned to the distributing agency.

(2) When contracts are terminated at a contracting agency's request, where there has been no fault or negligence on the part of the processor, the processor shall:

(i) If the donated foods remaining in inventory are non-substitutable, return foods to the contracting agency unless other arrangements are specifically approved by the State distributing agency;

(ii) When feasible and with the concurrence of any affected distributing agency(ies), transfer all substitutable donated food inventories to other distributing agency(ies) with which the processor has contracts;

(iii) Return the substitutable donated foods unaccounted for or replace with a like quantity of the same foods of equal or better quality as certified in accordance with paragraph (g)(2) of this section and return such purchased foods to a destination designated by the distributing agency, with transportation charges for such shipments borne by the contracting agency; or

(iv) Pay the distributing agency an amount equal to the Department's cost based on the most recent data provided by the Department, as of the date of termination, of replacing the foods which cannot be returned to the distributing ageny or, with FNS approval, pay the distributing agency an amount equal to the stated contract value of donated foods in the processor's inventory.

(3) Funds received by distributing agencies upon termination of contracts shall, at the option of FNS, be (i) used to replace the donated foods in kind, (ii) used by the distributing agency in accordance with § 250.6(k) of this part, or (iii) paid to the Department.

(l) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraph (e) or (f) of this section, the contracting agency shall encourage each recipient agency to submit refund applications promptly. In no event shall such applications be submitted later than 90 days after the close of (i) the school year to which they pertain by schools or (ii) the fiscal year to which they pertain by other recipient agencies.

(2) The distributing agency shall review each application to verify that the recipient agency is an eligible purchaser and forward the application to the processor within a reasonable length of time.

(3) Not later than 30 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency equal to the stated contract value of the donated foods contained in the purchased end products covered by the application.

(m) *Contract approval.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processor, forward a copy to the appropriate FNSRO, and retain a copy for its files.

(n) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract and the number of units of end products delivered to each during the reporting period;

(ii) Donated-food inventory at the beginning of the reporting period;

(iii) Amount of donated foods received during the reporting period;

(iv) Number of units of approved end products delivered to eligible recipient agencies during the reporting period and the number of pounds of each donated food represented by these delivered end products;

(v) Donated-food inventory at the end of the reporting period.

(2) Distributing agencies shall review and analyze reports submitted by processors to insure that performance under each contract is in accordance

with the provisions set forth in this section.

(o) *Inventory controls.* Distributing agencies shall monitor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of food ordered by the contracting agency be in excess of anticipated usage or beyond the processor's ability to accept and store the food at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits.

(p) *Processing inventory reports.* Distributing agencies shall submit to the FNS Regional Office not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State:

(1) The donated-food inventory at the beginning of the previous quarter;

(2) Amounts of donated foods received during the quarter;

(3) Amounts of donated foods used during the quarter; and

(4) Inventory at the close of the quarter.

(q) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by (1) giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 220, 225, and 226) or are otherwise suitable for use in such program; (2) consult with that agency with regard to the labeling requirements for the end products; and (3) otherwise request technical assistance as needed from that agency.

(r) *FNS Regional Office review of contracts and inventory reports.* The FNS Regional Office shall (1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section, (2) allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section, (3) review and analyze the processing inventory reports required by paragraph (p) of this section to insure that no additional donated foods shall be distributed to processors with excess inventories, and (4) assist distributing agencies in reducing such inventories.

(s) *Availability of copies of processing contracts.* Contracts entered into in accordance with this section are public records and FNS will provide copies of such contracts to any person upon request. The FNS Regional Office shall retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the fiscal year to which they pertain.

(t) *Processing activity guidance.* Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. The manual shall include, at a minimum, a copy of the standard form contract(s) and statements of the distribution agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications. This guidance material shall be provided to processors within 60 days of annual agreement approval by the State distributing agency. This material will also be provided to recipient agencies and contracting agencies within 60 days of approval of the annual agreement to receive donated commodities by the State and distributing agency.

(Approved by the Office of Management and Budget under control number 0584-0007)

(44 U.S.C. 3506)

[46 FR 41482, Aug. 14, 1981, as amended at 47 FR 745, Jan. 7, 1982; 48 FR 28611, June 23, 1983; 50 FR 20198, May 15, 1985]

PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM FOR FISCAL YEARS 1984 AND 1985

Sec.

251.1 General purpose and scope.
251.2 Administration.
251.3 Definitions.
251.4 Availability of commodities.
251.5 Eligibility determinations.
251.6 Household eligibility and distribution plan.
251.7 Formula adjustments.
251.8 Payment of funds for storage and distribution costs.
251.9 Miscellaneous provisions.

AUTHORITY: Sec. 210(a), Pub. L. 98-8, as amended.

SOURCE: 48 FR 55991, Dec. 16, 1983, unless otherwise noted.

§ 251.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out certain provisions of Pub. L. 98-8, as amended.

§ 251.2 Administration.

(a) Within the United States Department of Agriculture (the "Department"), the Food and Nutrition Service (FNS) shall have responsibility for the distribution of food commodities and apportionment of funds under this part.

(b) Within the States, distribution to emergency feeding organizations and receipt of payments for storage and distribution shall be the responsibility of the State agency which has: (1) Been designated for such responsibility by the Governor or other appropriate State executive authority; and (2) entered into an agreement with the Department for such distribution and receipt in accordance with paragraph (c) of this section.

(c) Each State agency which has been designated to make distributions of donated foods to emergency feeding organizations and to receive payments for storage and distribution costs in accordance with § 251.8 of this part shall perform those functions pursuant to an agreement entered into with the Department.

§ 251.3 Definitions.

For the purposes of this part:

(a) The terms used in this part that are defined in Part 250 of this chapter shall have the meanings ascribed to them therein.

(b) "Emergency feeding organization" means any public or nonprofit private agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, and which receives commodities under agreements pursuant to § 251.2(c). This definition includes soup kitchens, temporary shelters, hunger centers for indigent persons, and food banks.

(c) "Formula" means the formula on the basis of which commodities and funding available under this part will be apportioned among States. The amount of such commodities or funds to be provided to each State will be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State.

(d) "State agency" means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(e) "Storage and distribution costs" means direct costs for the operation of the program that are incurred by an emergency feeding organization or by a State for intrastate storage and distribution of commodities donated under this part.

(f) "Value of commodities distributed" means the Department's cost of acquiring commodities for distribution under this part.

§ 251.4 Availability of commodities.

(a) *General.* The Department shall make commodities available for distribution and use in accordance with the provisions of this part and also in accordance with the terms and conditions of Part 250 of this chapter to the extent that the Part 250 terms and conditions are not inconsistent with this part.

(b) *Displacement.* State agencies shall require that emergency feeding organizations receiving commodities under this part not diminish their normal expenditures for food because of receipt of commodities. Additionally, the Secretary shall withhold commodities from distribution if he determines that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market.

(c) *Allocations.* (1) Allocations of commodities shall be made to State agencies on the basis of the formula defined in § 251.3(c). (2) FNS shall promptly notify State agencies regarding their allocation of commodities to be made available under this part.

(d) *Quantities requested.* State agencies shall: (1) Request commodities only in quantities which can be utilized without waste in providing food assistance to needy persons under this part; (2) ensure that no emergency feeding organization receives commodities in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities; and (3) establish distribution rates, based on household size, to be used by emergency feeding organizations which provide commodities to needy persons in households.

(e) *Initial processing and packaging.* The Department will furnish commodities to be distributed to institutions and to needy persons in households in forms and units suitable for institutional and home use.

(f) *Bulk processing by States.* Commodities may be made available to a State agency or, at the direction of the State agency, directly to private companies for processing bulk commodities for use by emergency feeding organizations.

(1) The Department will reimburse the State agency at the current flat rate for such processing.

(2) Minimum yields and product specifications established by the Department must be met by the processor.

(3) The State must require the processor to meet State and local health standards.

(4) The external shipping containers of processed products shall be clearly labeled "Donated by the U.S. Department of Agriculture—Not to be Sold or Exchanged." Internal packaging shall be clearly marked "Donated by the U.S. Department of Agriculture—Processed Under Agreement with the State of ———." FNS may grant waivers to the internal label requirement if the enforcement of this requirement precludes a State's participation in the program, or in cases where other processors are not available who are able to meet the labeling requirement within the allowed reimbursement.

(5) Processors and State agencies must also meet the basic minimum requirements of § 250.15.

§ 251.5 Eligibility determinations.

(a) *Eligible emergency feeding organizations.* Prior to making distribution to these agencies, the State agency shall determine that they are eligible as emergency feeding organizations under this part and shall enter into agreements in accordance with § 251.2(b) of this chapter when such agreements have not already been entered into.

(b) *Criteria for determining recipient eligibility.* Each State agency shall establish criteria for determining the eligibility of persons to receive commodities provided under this part for household use. The criteria must enable the State to insure that only persons who are in need of food assistance because of inadequate household income receive commodities. The criteria shall include income-based standards and the methods by which persons may demonstrate eligibility under such standards.

§ 251.6 Household eligibility and distribution plan.

Prior to initiating distribution, the State agency shall submit for approval by the appropriate FNS Regional Office a plan which includes (a) a description of the criteria established in accordance with § 251.5 for determining that persons in households are in need of food assistance under this part and (b) the rates for distributing commodities to persons in households established in accordance with § 251.4(d)(3).

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make semi-annual adjustments of the commodity allocations for each State based on updated unemployment statistics. These adjustments will be effective for the six-month periods beginning January 1 and July 1 of each of Fiscal Years 1984 and 1985.

(b) *Funds adjustment.* The Department will make annual adjustments of the funds allocations for each State based on updated unemployment statistics. These adjustments will be effective for the entirety of each of Fiscal Years 1984 and 1985.

§ 251.8 Payment of funds for storage and distribution costs.

(a) *Availability and apportionment of funds.* FNS shall make funds available to States for storage and distribution costs of commodities distributed under this part. The funds will be provided on an annual basis for each of the fiscal years ending September 30, 1984 and September 30, 1985. Each State shall receive a funding apportionment based on the formula defined in § 251.3(c).

(b) *Uniform Federal Assistance Regulations.* Funds provided under this section shall be subject to the Department's regulations issued under 7 CFR Part 3015.

(c) *Payment to States.* (1) Funds under this section shall be made available by means of U.S. Treasury Department checks or letters of credit in favor of the appropriate State agency. All funds will be released by the Department to the State agency responsible for emergency feeding organizations. The State agency shall use any funds received without delay in accordance with paragraph (d) of this section.

(2) Upon notification by the FNSRO that an agreement has been entered into in accordance with § 251.2(c) of this part, FNS shall issue a grant award pursuant to FNS Instruction 407-3 (Grant Award Process), and promptly make funds available to each State agency within the State's apportionment either through issuance of a letter of credit or a U.S. Treasury check pursuant to submission of the SF-270, Request for Advance or Reimbursement. State agencies shall receive funds through a letter of credit if program payments are more than $120,000 for the year. In general, funds will be made available to State agencies on a reimbursement basis. Advance payments to State agencies will be available for emergency feeding organizations which have demonstrated their need for advance payments.

(3) Each State agency shall return to FNS any funds made available under this section which are unobligated as of the end of the fiscal year for which they were made available. Such return shall be made as soon as practicable but in no event later than 30 days following demand made by FNS.

(d) *Use of Funds.* (1)(i) Each State agency shall make available at least 20 percent of the apportionment it receives in any fiscal year under paragraph (a) of this section for payment of the actual local storage and distribution costs incurred by emergency feeding organizations. (ii) The remaining amount of the apportionment may be used for State storage and distribution costs related to emergency feeding organizations.

(2) State agencies shall not make advance payments to emergency feeding organizations in amounts in excess of 35 percent of any projected payments to such organizations as estimated by the State.

(3) In no case shall payments to emergency feeding organizations under (d)(1) of this paragraph exceed 5 percent of the value of commodities distributed under this part in any fiscal year by such emergency feeding organizations.

§ 251.9 Miscellaneous provisions.

(a) *Records.* (1) State agencies and emergency feeding organizations shall maintain records to document the receipt, disposal and inventory of commodities received under this part in accordance with requirements of § 250.6(r) of this chapter.

(2) In addition to maintaining financial records in accordance with 7 CFR Part 3015, State agencies which receive funds under this part shall maintain records to document that the amount of funds paid to emergency feeding organizations for the actual storage and distribution costs incurred by any emergency feeding organization does not exceed 5 percent of the value of commodities distributed by such organizations in accordance with § 251.8(d)(3) of this part. State agencies shall ensure that emergency feeding organizations maintain records as required by this paragraph.

(b) *Commodities not income.* In accordance with section 206 of Pub. L. 98-8, as amended, and notwithstanding any provision of law, commodities distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(c) *Non-Discrimination.* There shall be no discrimination in the distribution of foods donated under this part because of race, color, national origin, sex, age, or handicap.

(d) *Prohibition on sale or other disposal in commercial channels.* In accordance with section 205(b) of Pub. L. 98-8, as amended, except as otherwise provided in paragraph 251.4(d) of this part, none of the commodities distributed under this part shall be sold or otherwise disposed of in commercial channels in any form.

(e) *Relationship to the Food Stamp Program.* In accordance with section 205(a) of Pub. L. 98-8, as amended, section 4(b) of the Food Stamp Act of 1977 does not apply with respect to the distribution of commodities to households under this part.

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

Sec.
252.1 Purpose and scope.
252.2 Definitions.
252.3 Administration.
252.4 Application to participate and agreement.
252.5 Recipient agency responsibilities.
252.6 Miscellaneous provisions.

AUTHORITY: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

SOURCE: 50 FR 37167, Sept. 12, 1985, unless otherwise noted.

§ 252.1 Purpose and scope.

(a) *Purpose.* This part provides a program whereby the Food and Nutrition Service (FNS) and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The intent of the program is to encourage private industry, acting in cooperation with FNS, to develop new markets in which donated food may be utilized. It is expected that the processors will use their marketing abilities to encourage eligible recipient agencies to participate in the program. Additionally, recipient agencies will benefit by being able to purchase processed end products at a substantially reduced price.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FNS for the processing of commodities designated by the Secretary of Agriculture and the minimum requirements which NCP processors must meet. Also prescribed are distributing agency and recipient agency responsibilities.

(c) *Eligible recipient agencies.* Recipient agencies shall be eligible to participate in the NCP Program to the extent of their eligibility to receive the food involved in the NCP Program, pursuant to § 250.8 and Part 251.

§ 252.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

"*Agreement value of the donated commodity*" means the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"*Distributing agencies*" means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated food to eligible recipient agencies and recipients; and FNS when it accepts title to commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Commodity Processing Program. A recipient agency may also be a distributing agency.

"*Donated food value return system*" means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the donated commodity.

"*NCP Program*" means a program under which FNS and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies.

"*Recipient agency*" means disaster organizations, charitable institutions, nonprofit summer camps for children, school food service authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations.

"*Substitution*" means the replacement of donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.).

§ 252.3 Administration.

(a) *Role of FNS.* The Secretary will designate those commodities which will be available under the NCP Program. Only commodities made available without charge or credit under any nutrition program administered by USDA will be available under NCP. FNS will act as the distributing agency and the contracting agency under the NCP Program. The Department will pay costs for delivering donated commodities to participating NCP Program processors.

(b) *Food orders.* When NCP Program processors request donated food, FNS will determine whether the quantities ordered are consistent with the processor's ability to sell end products and/or the processor's past demonstrated performance under the program. If the quantities are appropriate, FNS will request from CCC the donated food for transfer of title to FNS and delivery to a mutually agreed upon location for use by the NCP Program processor. The title to these commodities transfers to FNS upon their acceptance by the processor. FNS retains title to such commodities until:

(1) They are distributed to eligible recipient agencies in processed form at which time the recipient agency takes title;

(2) They are disposed of because they are damaged or out-of-condition; or

(3) Title is transferred to the NCP Program processor upon termination of the agreement.

(c) *Substituted food.* When FNS approves the substitution of donated commodities with commercial food, title to the substituted food shall transfer to FNS and the processor shall use the substituted food in accordance with the terms and conditions of this part.

(d) *Inventory levels.* FNS will monitor the inventory of each food processor to ensure that the quantity of donated food for which a processor is accountable is at the lowest cost-efficient level. In no event shall a processor hold in inventory more than a six-month supply, based on average monthly usage under the NCP Program, unless a higher level has been specifically approved by FNS on the basis of justification submitted by the processor. Under no circumstances should the amount of donated food requested by the processor be more than the processor can accept and store at any one time. FNS will make no further distribution to a processor whose inventory exceeds these limits until such time as the inventory is reduced.

(e) *Recipient agency registration.* FNS will register, upon request, eligible recipient agencies. FNS will make available to food processors a listing of registered eligible recipient agencies for marketing purposes. Any processor desiring additional listings will be charged a fee for the listing which is commensurate with the Department's policy on user fees.

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§ 252.4 Application to participate and agreement.

(a) *Application by processors to participate.* Any food processor is eligible to apply for participation in the NCP Program. Applications may be filed with FNS at any time on an FNS-approved form. FNS will accept or reject the application of each individual food processor within 30 days from the date of receipt, except that FNS may, at its discretion, extend such period if it needs more information in order to make its determination. In determining whether to accept or reject an application, FNS shall take into consideration at least the following matters: the financial responsibility of the applicant; the ability of the applicant to meet the terms and conditions of the regulations and the NCP agreement; ability to accept and store commodities in minimum truckload quantities; historical performance under the State and NCP processing programs; anticipated new markets for NCP end products; geographic areas served by the processor; the ability of the applicant to distribute processed products to eligible recipient agencies; and a satisfactory record of integrity, business ethics and performance. In addition, the processors must demonstrate their ability to sell end products under NCP by submitting supporting documentation such as written intent to purchase, bids awarded, or historical sales performance. FNS will make a final determination based on all available documentation submitted.

(b) *Agreement between FNS and participating food processors.* Upon approval of an application for participation in the NCP Program, FNS shall enter into an agreement with the applicant food processor. All agreements under the NCP Program will terminate on June 30, 1986.

(c) *Processor requirements and responsibilities.* In accordance with the following provisions and the NCP agreement, any processor participating in the NCP Program may sell to any eligible recipient agency nationwide a processed product containing the donated food received from FNS.

(1) The processor shall submit to FNS end product data schedules which include a description of each end product to be processed, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product. FNS may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings. The end product data schedule must include the processors' free on board (FOB) plant price schedule for quantity purchases of processed products. The end product data schedule shall be made a part of the NCP agreement.

(2) When determining the value of the donated food, the processor shall use the agreement value of the donated food which shall be the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

(3) The processor shall demonstrate to the satisfaction of FNS that internal controls are in place to ensure that duplicate reporting of sales under the NCP Program and any other food distribution program does not occur.

(4) The processor shall use a method of selling end products to recipient agencies which ensures that the price of each case of end product is reduced by the agreement value of the donated commodity and ensures proper accountability. In line with FNS guidelines and subject to FNS approval, the processor shall select one or more of the following donated food value return systems to use during the term of the agreement. Regardless of the method used, the processor shall ensure that the invoice clearly indicates the discount included or refund due on the end product and clearly identifies that the discount included or refund due is for the value of the donated food. Regardless of the method chosen for selling end products, the processor shall reduce his inventory only by the amount of donated food represented by the discount or refund placed on the end product.

(i) *Direct sale.* A direct sale is a sale by the processor directly to the eligible recipient agency. The following two methods of direct sales are allowed:

(A) *Discount system.* When the recipient agency pays the processor directly for an end product purchased, the processor shall invoice the recipient agency at the net case price which shall reflect the value of the discount established in the agreement.

(B) *Refund system.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor within 30 days of receipt of the processed end product and the processor shall pay directly to the eligible recipient agency within 30 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(ii) *Indirect sale.* An indirect sale is a sale by the processor through a distributor to an eligible recipient agency. Indirect sales can be made with or without dual billing. Dual billing involves the processor billing the recipient agency for the end product and the distributor billing the recipient agency for the cost of services rendered in the handling and delivery of the end product. The following three methods of indirect sales are allowed:

(A) *Sale through distributor with dual billing.* When end products are sold to recipient agencies through a distributor under a system utilizing dual billing, the processor shall invoice the recipient agencies directly for the end products purchased at the net case price which reflects the value of the discount established in the agreement. The processor shall ensure that the distributor bills the recipient agencies only for the services rendered in the handling and delivery of the end product. The processor shall maintain delivery and/or billing invoices to substantiate the quantity of end product delivered to each recipient agency and the net case price charged by the processor which reflects the discount established by the agreement.

(B) *Sale through distributor without dual billing.* When end products are sold to recipient agencies through a distributor without dual billing, processors shall utilize a system that ensures that distributors provide discounts to recipient agencies. Such system shall be subject to approval by FNS. The processor must ensure proper accountability for the end products sold by distributors. The processor shall verify sales made by the distributor as specified in the NCP agreement. This shall include, but not be limited to: (*1*) Verifying sales of end products to eligible recipient agencies reported by distributors using a statistically valid sampling of such recipient agencies; (*2*) Reporting to FNS the level of invalid or inaccurate sales as part of a corrective action plan to correct significant problem trends as defined by FNS; and (*3*) Submitting monthly performance report adjustments and a plan to prevent or reduce future errors. If, as a result of this verification, FNS determines that the value of donated food has not been passed on to recipient agencies or when end products have been improperly distributed, FNS shall assert a claim against the processor in accordance with FNS instructions. Such claim may include a projection of the results of the verification sample to the total NCP sales reported by the processor.

(C) *Sale through distributor with a refund.* Under the refund system, processors shall sell end products to distributors at the commercial/gross price of the end product. Distributors shall sell end products to recipient agencies at the commercial/gross price of the end products. Processors shall ensure that their invoices and the invoices of distributors identify the discount established by the agreement. Recipient agencies shall submit refund applications within 30 days of receipt of the processed end product. Within 30 days of the receipt of the refund application from the recipient agency certifying actual purchases of end product from substantiating invoices maintained by the recipient agency, the processor shall compute the amount and issue payment of the refund directly to the recipient agency. In no event shall refund applications for purchases during the period of the agreement be accepted by the processor later than 60 days after the close of the agreement period.

(5) The processor shall furnish to FNS prior to the ordering of any donated food for processing, a performance supply and surety bond obtained from surety companies listed in the current Department of Treasury Circular 570 or an irrevocable letter of credit to cover the amount of inventory on hand and on order.

(6) The processor shall draw down inventory only for the amount of donated food used to produce the end product. Processors shall ensure that amount equivalent to 100 percent of the donated food provided to the processor under the NCP Program is physically contained in end products. Additional commodities required to account for loss of donated food during production shall be obtained from non-donated food.

(7) The processor shall contact FNS for approval of any substitution of donated food. If approved, the processor shall substitute for donated food like quantities of domestically produced commercial food of the same generic identity (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.) and of equal or better quality. Substitution must not be made solely for the purpose of selling or disposing of the donated commodity in commercial channels for profit. Substitution is only appropriate in the case of commingling of donated food and commercial food or when delays in donated food shipment adversely affect production. The processor shall maintain records to substantiate that they continue to acquire on the commercial market amounts of substitutable food consistent with their level of non-NCP Program production and to document the receipt and disposition of the donated food. FNS shall withhold deliveries of donated commodities from processors that FNS determines have reduced their level of non-NCP Program production because of participation in the NCP Program.

(8) The processor shall be liable for all donated food provided under the agreement. The processor shall immediately report to FNS any loss or damage to donated food and shall dispose of damaged or out-of-condition food in accordance with § 250.7.

(9) The processor shall submit to FNS monthly activity reports reflecting the sale and delivery of end products during the month.

(i) The processor shall ensure that the monthly activity report is postmarked no later than the last day of the month following the month being reported. The processor shall identify the month of delivery for each sale reported. The sale and delivery of end products for any prior month may be included on the monthly activity report. The processor shall include in the activity report: (A) The donated food inventory at the beginning of the reporting month; (B) The amount of donated food received from the Department during the reporting month; (C) Amount of donated food transferred to and/or from existing inventory; (D) A list of all recipient agencies purchasing end products and the number of units of end products delivered to each during the report month; the net price paid for each unit of end product; when the sale is made through a distributor, the name of the distributor; and (E) the donated food inventory at the end of the reporting month.

(ii) At the end of each agreement period, there will be a final 90 day reconciliation period in which processors may adjust NCP sales for any month.

(10) The processor shall maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food.

(i) The processor shall keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

(ii) The processor shall document that sales reported on the monthly activity reports, specified in paragraph (c)(9) of this section, were made only to registered eligible recipient agencies and that the normal wholesale price of the product was discounted or a refund payment made for the agreement value of the donated commodity.

(iii) When donated food is commingled with commercial food, the processor shall maintain records which will permit an accurate determination of the donated commodity inventory.

(iv) The processor shall make all pertinent records available for inspection and review upon request by FNS, its representatives and the General Accounting Office (GAO). All records must be retained for a period of three years from the close of the Federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

(11) The processor shall obtain, upon FNS request, Federal acceptance service grading and review of processing activities and shall be bound by the terms and conditions of the grading and/or review.

(12) The processor shall indemnify and save FNS and the recipient agency free and harmless from any claims, damages, judgements, expenses, attorney's fees, and compensation arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part by any and all persons whatsoever as a result of or arising out of any act or omission of the processor, his/her agents or employees, or caused or resulting from any deleterious substance, including bacteria, in any of the products produced from donated food.

(13) The processor shall be liable for payment for all uncommitted food inventory remaining at agreement termination.

(i) When agreements are terminated at the request of the processor or at FNS's request because there has been noncompliance on the part of the processor with the terms or conditions of the agreement, or if any right of FNS is threatened or jeopardized by the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, plus any expenses incurred by FNS.

(ii) When agreements are terminated at FNS' request where there has been no fault or negligence on the part of the processor, the processor shall pay FNS an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the donated commodities, whichever is highest, for the inventory, unless FNS and the processor mutually agree on another value.

(14) The processor shall comply fully with the provisions of the NCP agreement and all Federal regulations and instructions relevant to the NCP Program.

(15) The processor shall label end products in accordance with § 250.15(j) and, when end products contain vegetable protein products, in accordance with 7 CFR Part 210, 225, or 226 Appendix A.

(16) The processor shall return to FNS any funds received from the sale of donated food containers and the market value or the price received from the sale of any by-products of donated food or commercial food which has been substituted for donated food.

(Information collection requirements approved by the Office of Management and Budget under control no. 0584-0325)

§ 252.5 Recipient agency responsibilities.

(a) *Registration.* Recipient agencies that have approved agreements with distributing agencies to receive donated food may register with FNS on an FNS approved form to participate in the NCP Program. Upon request, FNS will provide recipient agencies with registration forms. Recipient agencies shall notify FNS when they are no longer eligible to receive donated food under an agreement. Failure to notify FNS shall result in claim action.

(b) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any funds which arise from the operation of the distribution program.

(c) *Refunds.* A recipient agency purchasing end products under the NCP Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor within 30 days of receipt of the end products. Recipient agencies must insure that any funds received as a result of refund payments be designated for use by the food service department.

(d) *Verification.* If requested by FNS, each recipient agency is encouraged to cooperate in the verification of end product sales reported by processors under the NCP Program. The recipient agency may be requested to verify actual purchases of end product as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

§ 252.6 Miscellaneous provisions.

(a) *Improper distribution or loss of or damage to donated food.* If a processor improperly distributes or uses any donated food, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, FNS shall require the processor to pay to the Department the value of the donated food as determined by the Department.

(b) *Disposition of damaged or out-of-condition food.* Donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State, or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department. Upon a finding by the Department that donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated food.

(c) *Sanctions.* Any processor or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NCP Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(d) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity-related funds, assets, or property in child nutrition programs.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud commodities donated for use in the NCP Program, or any funds, assets, or property deriving from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to, commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

(Information collection requirements approved by the Office of Management and Budget under control no. 0584-0325)

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

Sec.

253.1 General purpose and scope.
253.2 Definitions.
253.3 Availability of commodities.
253.4 Administration.
253.5 State agency requirements.
253.6 Eligibility of households.
253.7 Certification of households.
253.8 Commodity control, storage and distribution.
253.9 Administrative funds for State agencies.

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SOURCE: 44 FR 35928, June 19, 1979, unless otherwise noted. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982.

§ 253.1 General purpose and scope.

This part describes the terms and conditions under which: commodities (available under Part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations, and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program and the Food Stamp Program on Indian reservations when such concurrent operation is requested by an ITO.

§ 253.2 Definitions.

(a) "Exercises governmental jurisdiction" means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

(b) "Food distribution program" means a food distribution program for households on Indian reservations operated pursuant to sections 4(b) and 1304(a) of Pub. L. 95-113.

(c) "Indian tribal household" means any household in which at least one adult member is recognized by the appropriate ITO as a tribal member.

(d) "Indian tribe" means (1) any Indian tribe, Band, or other organized Indian group, for example, a Rancheria, Pueblo, or colony, and including any Alaska Native village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), and that is on a reservation and recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

(e) "Indian tribal organization (ITO)" means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to operate the Food Stamp Program or a Food Distribution Program on their behalf.

(f) "Reservation" means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

(g) "State" means any one of the fifty States, the District of Columbia, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

(h) "State agency" means: (1) The agency of State government, including the local offices thereof, which enters into an agreement with FNS for the distribution of commodities on all or part of an Indian reservation, and

(2) The ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, which enters into an agreement with FNS for the distribution of commodities on all or part of an Indian reservation.

(i) "Urban place" means a town or city with a population of 10,000 or more.

[44 FR 35928, June 19, 1979. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

§ 253.3 Availability of commodities.

(a) *Conditions for distribution.* In jurisdictions where the Food Stamp Program is in operation, there shall be no distribution of commodities to households under the authority of any law, except that distribution may be made (1) on a temporary basis under programs authorized by law to meet disaster relief needs, (2) for the purpose of the Commodity Supplemental Food Program, and (3) whenever a request for concurrent or separate Food Distribution Program on a reservation is made by an ITO.

(b) *Concurrent or separate food program operation.* Distribution of commodities, with or without the Food Stamp Program, shall be made whenever an ITO submits to FNS a completed application for the Food Distribution Program on all or part of a reservation and the application is approved by FNS.

(1) Except as provided in paragraph (b)(2) of this section, when the Food Distribution Program is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program, or, if the ITO has elected concurrent operation of the Food Stamp Program, may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(2) FNS may determine, based on the number of non-Indian tribal households located on all or part of a reservation, that concurrent operation is necessary. When such a determination has been made all households residing in such areas may apply to participate in either the Food Stamp or the Food Distribution Program.

(c) *Household distribution.* Commodities acquired under section 416 of the Agricultural Act of 1949, as amended; section 32 of Pub. L. 320, 74th Congress, as amended; section 709 of the Food and Agricultural Act of 1963, as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, by section 1304 of the Food and Agriculture Act of 1977, may be made available under Part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(d) *Food distribution program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of commodities made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to Food Stamp Program benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the four food groups: Meat, Vegetable-Fruit, Milk, and Bread-Cereal. FNS shall periodically notify State agencies of the kinds of commodities it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed commodities cannot be delivered, the Department shall arrange for delivery of a similar commodity within the same food group.

§ 253.4 Administration.

(a) *Federal administration.* Within the Department of Agriculture, the Food and Nutrition Service (FNS) shall be responsible for the Food Distribution Program. FNS shall have the power to determine the amount of any claim and to settle and adjust any claim.

(b) *State agency administration.* (1) If FNS determines that the ITO is capable of effective and efficient administration, the ITO shall administer the Food Distribution Program on all or part of the reservation. If FNS determines that the ITO is not capable of effective and efficient administration of the Food Distribution Program, the appropriate agency of the State government shall be responsible for the Food Distribution Program on all or part of the Indian reservation. In addition, the appropriate agency of the State government may administer the Program on behalf of an otherwise capable tribe if agreed to in writing by both parties.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and appropriate State agen-

cies may jointly request FNS approval that a single State agency administer the Food Distribution Program on all or part of the Indian reservation.

(3) An agency of State government responsible for administering the Food Distribution Program may contract Program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials, commodity issuance, determination of food preferences of households, publicizing uses of commodities, and transportation and on-site delivery services. The State agency may also use the ITO in prescreening translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations with an ITO that has been determined incapable of administering the Food Distribution Program. In all cases the State agency shall retain full responsibility for program administration.

(c) *Qualification as a reservation.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FNS determines that such area(s) does not qualify as a reservation as that term is defined in these regulations. For purposes of this part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FNS.

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this part, must show to FNS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians;

(ii) A clear and precise description of the boundaries of such geographic area(s).

(d) *Application by an ITO.* Any ITO which desires to participate in the Food Distribution Program shall file an application with the FNS Regional Office serving the State or States in which the reservation is located. The ITO shall specify if it is requesting the Food Distribution Program alone or concurrently with the Food Stamp Program. The ITO shall also specify whether it wants either or both programs on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). Additionally, if the ITO wishes to serve areas near the reservation, the ITO shall describe the geographic boundaries of the near area(s) for FNS review and approval. Any urban place inside a reservation can be served by the Food Distribution Program. Any urban place outside reservation boundaries may not be served. However, an ITO or State agency can request the Department to change those limitations with justification. The ITO application shall also provide other information requested by FNS, including but not limited to, that the ITO serves an established reservation or a reservation otherwise qualified as described in paragraph (c) of this section. Properly addressed applications shall be acknowledged by the FNS Regional Office in writing within five working days of receipt.

(e) *Tribal capability.* (1) In determining whether the ITO on a given reservation is potentially capable of effectively and efficiently administering a Food Distribution Program, allowing for fulfillment of that potential through training and technical assistance, FNS shall consult with other sources, such as the BIA, and shall consider the ITO's experience, if any, in operating other government programs and its management and fiscal capabilities. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(i) Order and properly store commodities,

(ii) Certify eligible households,

(iii) Arrange for physical issuance of commodities,

(iv) Keep appropriate records and submit required reports,

(v) Budget and account for administrative funds,

(vi) Determine the food preferences of households, and

(vii) Conduct on-site reviews of certification and distribution procedures and practices.

(2) The Food and Nutrition Service (FNS) shall make a determination of potential Indian Tribal Organization (ITO) capability within 30 days of receipt of a completed application for the Food Distribution Program. FNS shall promptly advise ITOs of the need for additional information if an incomplete application is received.

(3) FNS shall, if requested by an ITO which has been determined by FNS to be potentially capable of administering a Food Distribution Program, provide the ITO's designees with appropriate training and technical assistance to prepare the ITO to take over program administration. In determining what training and technical assistance are necessary, FNS shall consult with the ITO and other sources, such as the BIA.

[44 FR 35928, June 19, 1979, as amended by Amdt. 163, 45 FR 14006, Mar. 4, 1980. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

§ 253.5 State agency requirements.

(a) *Plan of operation.* (1) The State agency which assumes responsibility for the Food Distribution Program shall submit an annual plan of operation for approval by FNS. Approval of the annual plan by FNS shall be a prerequisite to the donation of commodities available for use by households under § 253.9 of this part. No amendment to the plan of operation of any State agency shall be effective without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. If the agency is not an ITO, the appropriate agency of the State government shall also:

(i) Consult in good faith with the ITO on the reservation where the appropriate agency of the State government is responsible for administering the Food Distribution Program.

(ii) A State agency which is not an ITO shall submit its plan of operation, budget and any substantive subsequent amendments to the ITO for comment at least 45 days prior to submission of the plan, budget or amendment to FNS. Comments by the ITO shall be attached to the plan, budget or amendment which is submitted to FNS. This paragraph does not apply to amendments required by FNS under § 253.7(a)(1).

(2) The plan of operation shall describe the manner in which commodities will be distributed, including, but not limited to, the storage and distribution facilities to be used, the procedures to assure ongoing consultation with the ITO where the appropriate agency of the State government administers the Program, the method by which the food preferences of households shall be determined, the manner in which the State agency plans to supervise the Food Distribution Program, and plans by which the State agency will control dual participation. The plan shall also include by reference or otherwise the following assurances:

(i) No household on any Indian reservation shall be permitted to participate simultaneously in the Food Stamp Program and the Food Distribution Program.

(ii) The value of the commodities provided to any eligible household shall not be considered income or resources for any purposes under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs; and no State agency shall decrease any assistance otherwise provided to a household because of the receipt of commodities.

(iii) The distribution of commodities shall not be used as a means for furthering the political interest of any individual or party.

(iv) There shall be no discrimination in the certification of applicant households or in the distribution of commodities because of sex, race, color, age, political beliefs, religion, handicap or national origin.

(v) Households shall not be required to make any payments in money, materials or services for, or in connection with, the receipt of commodities; and they shall not be solicited in connection with the receipt of commodities for voluntary cash contributions for any purpose.

(vi) Adequate personnel, including supervisory personnel, to review the Food Distribution Program shall be provided to ensure compliance with the requirements of this part.

(vii) Use of disclosure of information obtained from food distribution applicant households, exclusively for the Food Distribution Program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Distribution Programs as defined in Part 283 of this subchapter, the Food Stamp Act or regulations, or with other Federal or federally aided, means-tested assistance programs such as Title IV-A (AFDC), XIX (Medicaid), or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in § 273.2(j)(2).

(b) *Operating manuals.* The State agency shall maintain ongoing consultation with the ITO in developing the State agency's written internal policies, instructions, and forms which are necessary to carry out the Food Distribution Program and shall submit them to FNS for approval prior to their use. The State agency shall file any comments or recommendations offered by the ITO, for review by FNS.

(c) *Staffing.* Personnel used in the certification process shall be employed in accordance with (1) the current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under section 208 of the Intergovernmental Personnel Act of 1970 or (2) when appropriate, the ITO's personnel system if it incorporates the basic elements of a merit system.

(d) *Bilingual requirements.* (1) The State agency shall provide bilingual staff, certification forms, including the application form and certification notices as specified in § 283.7(a)(2) and (b)(3), respectively, and any form developed by the State agency for reporting changes in household composition and income, pursuant to § 283.7(c), and outreach materials, when either an estimated 100 or more low income households or the majority of low-income households on the reservation are a single language minority. Single-language minority refers to households which speak the same non-English language and which do not contain adults(s) fluent in English as a second language. If the non-English language is spoken but not written, the State agency shall provide bilingual staff, if required, but not bilingual material.

(2) The State agency shall ensure that offices serving reservations subject to the critiria in paragraph (d)(1) of this section provide sufficient bilingual staff for the timely processing of non-English speaking applicants.

(3) The State agency shall develop estimates of the numbers of low-income, single-language minority households by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P-25, No. 627) and knowledge of the reservation. Local Bureau of Census offices, Community Services Administration offices, Community Action agencies, Bureau of Indian Affairs, Indian Health Services, planning agencies, the ITO and school officials may be important sources of information in determining the need for bilingual services.

(e) *Outreach and referral.* The State agency shall inform potentially eligible households of the availability of the Food Distribution Program. The State agency shall develop and distribute printed information in the appropriate languages about the Program and eligibility requirements. Outreach material shall contain information about a household's right to file an application on the same date it contacts the certification office. The State agency shall be sufficiently familiar with general eligibility requirements for the Supplemental Food Program for Women, Infants and Children (WIC) or the Commodity Supplemental Food Program, if available to reservation residents, the Supplemental Security Income Program (SSI), and appropriate public and general assistance programs, to identify those applicants whose households contain persons who may be eligible for these programs, to inform the applicants of their potential eligibility, and to provide the applicants with the addresses and telephone numbers for these programs. For example, the State agency should provide information on the WIC program to applicants whose households contain pregnant women, nursing or postpartum women, or children up to the fifth birthday.

(f) *Training requirements.* The State agency shall institute a training program for all personnel who are assigned responsibility for the certification of applicant households, for fair hearing officers, for field supervisors who review local Food Distribution Programs, for those involved in outreach and those responsibile for ordering, storing, and distributing commodities.

(1) State agency training programs shall cover eligibility criteria, certification procedures, commodity ordering, storage and distribution practices, household rights and responsibilities and other job-related responsibilities. The content of the training material shall be reviewed and revised periodically to correct deficiencies in program operations or reflect changes in policy and procedures.

(2) The State agency shall allow public attendance at formal certification training sessions in accordance with § 274.2(e)(1)(iv).

(3) FNS shall review the effectiveness of State agency training based on information obtained from field reviews, administrative analyses and other sources.

(g) *Nutrition education.* The State agency shall publicize how commodities may be used to contribute to a nutritious diet and how commodities may be properly stored by means of visual displays, and printed material. The State agency shall encourage appropriate organizations, county extension home economists, expanded Food and Nutrition Program aides, and qualified volunteers to provide food and nutrition information, menus, or cooking demonstrations, as appropriate for participating households. The State agency shall encourage the dissemination of food and nutrition information designed to improve the nutrition of households on reservations.

(h) *Records and reports.* The State agency shall keep records and submit reports and other information as required by FNS. Records required under this part shall be retained for a period of three years from the date of the submission of the annual financial status report, SF-269; except that, if any litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(i) *Monitoring.* In accordance with its responsibility for efficient and effective program administration the State agency shall monitor and review its operations under this part to ensure compliance with the provisions of this part and with any applicable instructions of FNS.

(1) The State agency shall review program operations at least annually, document program deficiencies and establish and implement specific plans of corrective action for deficiencies noted.

(2) Reviews of operations shall include, but not be limited to, certification of households, determination of food preferences, distribution of commodities, fair hearing procedures, commodity inventories and timeliness and accuracy of reports to FNS.

(3) Program reviews and corrective action plans shall be available to FNS upon request.

(j) *Investigations and complaints.* The State agency shall promptly investigate complaints received of irregularities in the handling, distribution, receipt or use of commodities, other than use of commodities by eligible households in the preparation of meals for home consumption, and shall take appropriate action to correct any irregularities. The State agency shall also promptly investigate complaints of irregularities relating to certification procedures or the delivery of services and shall take appropriate action to correct any irregularities or noncompliance with provisions relating to certification procedures, provision of services or household rights. The State agency shall document each investigation and action in sufficient detail to allow for FNS review of all State agency actions and information. The Department shall make investigations at the request of the State agency and ITO or when the Department determines an investigation is necessary.

(k) *Sanctions.* If the State agency fails to comply with the provisions of this part or its plan of operation, FNS may:

(1) Take action against any State agency under § 283.9(g) of this part with respect to administrative funds available from FNS for use by the State agency or (2) disqualify the State agency from further distribution of commodities to households. Disqualification of the State agency shall not prevent FNS or the Department from taking other actions, including prosecution under applicable Federal statutes, when deemed necessary. Reinstatement shall be contingent upon approval by FNS of the State agency's plan for corrective action or determination by FNS that the State agency has complied with any other requirements for reinstatement which FNS may set forth. These provisions apply to all State agencies, regardless of whether the Program is administered by an agency of the State government or an ITO. If the ITO is disqualified as a State agency, an appropriate agency of State government shall administer the Food Distribution Program on the reservation. If an agency of State government is disqualified as the State agency for the Food Distribution Program on the reservation, the ITO may request in writing a capability determination for program administration in accordance with § 283.4.

(l) *Appeals.* (1) The agency of the State government or an ITO may appeal an initial determination by FNS on:

(i) Whether or not the reservation definition is met;

(ii) The capability of an ITO to administer the Food Distribution Program;

(iii) Sanctions taken under § 283.5(k) or § 283.9(g); or

(iv) The Federal matching percentage level of administrative funding made available by FNS.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph (l)(3)(ii) of this section.

(3) *Procedure*—(i) *Time limit.* Any State agency or ITO that wants to appeal an initial FNS determination under paragraph (l) of this section must notify the Administrator of FNS, in writing, within 15 days from the date of the determination. If the appeal concerns either paragraph (l)(1) (i) or (ii) of this section, the implementation timeframes as specified in § 283.4(d)(2) and the timeframe for determining an ITO's capability as specified in § 283.5 are suspended from the date the appeal is requested to the date of the final determination.

(ii) *Acknowledgment.* Within five days of receipt by the Administrator, of FNS, of a request for review, FNS shall provide the State agency or ITO with a written acknowledgment of the request by certified mail, return receipt requested. The acknowledgment shall include the name and address of the official designated by the Administrator, FNS, to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten days of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(4) *Scheduling a meeting.* If the Administrator, FNS, grants a meeting FNS shall advise the State agency or ITO of the time, date and location of the meeting by certified mail, return receipt requested at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and

make a decision within 60 days of the receipt of the information submitted in response to paragraph (l)(3)(ii) of this section.

(5) *Review.* If no meeting is conducted the official designated by the Administrator, FNS, shall review information presented by a State agency or ITO which requests a review and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (l)(3)(ii) of this section setting forth in full the reasons for the determination.

(6) *Final decision.* The official's decision after a meeting or a review shall be final.

(m) *Implementation.* The State agency shall implement changes required by amendments to these regulations in accordance with schedules specified in the amendment.

(1) *Amendment 2.* (i) If an ITO currently participates in, but does not administer, the Food Distribution Program on Indian Reservations:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 60 days of receipt of a completed application. If an incomplete application is received, FNS shall within 15 days, notify the ITO of what additional information is required. The processing time for the capability determination shall start from the date the additional information is received by FNS.

(B) Upon FNS' determination that the ITO will administer the Food Distribution Program on Indian Reservations, FNS shall expeditiously plan for and provide needed training and technical assistance to facilitate timely commencement of tribal administrative responsibilities. The ITO shall have 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation, operating manuals, and to commence program operations under the regulations as specified in this part. Extensions may be granted by FNS to ITOs if good cause is shown.

(C) If FNS determines that an ITO is not capable of administering the Food Distribution Program on Indian Reservations, FNS shall direct the State to continue program operations and submit a new plan of operation and to commence program operations under the regulations as specified in this part within 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section.

(ii) If an ITO currently administers the Food Distribution Program on Indian Reservations, the timeframes specified in paragraph (m)(1)(i) of this section apply except that:

(A) FNS shall determine tribal eligibility and capability to administer the Food Distribution Program on Indian Reservations within 30 days of receipt of a completed application.

(B) If FNS determines that the ITO will not administer the Food Distribution Program on Indian Reservations, FNS shall direct the ITO to continue program operations until the State government can commence program operations. The State government shall have 120 days from FNS' determination in paragraph (m)(1)(i)(A) of this section to submit and have approved a plan of operation and to commence program operations under the regulations as specified in this part.

(iii) If an ITO does not currently participate in a Food Distribution Program on Indian Reservations, the timeframes in paragraph (m)(1)(i) of this section apply except that if FNS determines that an ITO cannot administer the program, FNS shall direct the State to submit a plan of operation and to commence program operations under the regulations as specified in this part within 180 days from the determination.

(iv) Extensions to the above implementation timeframe (except for those timeframes set forth in paragraphs (m)(1) (i)(A) and (ii)(A) of this section) may be granted by FNS to ITOs or State government agencies if there is compelling justification involving circumstances which were not reasonably foreseeable and which are not the fault of the ITO or the State agency and which circumstances present extraordinary problems that would render earlier implementation impossible.

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§ 253.6 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution and provided that separate household or boarder status shall not be granted to a spouse of a member of the household, or to children under 18 years of age under the parental control of a member of the household.

(i) An individual living alone.

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others.

(iii) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(2) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility. Nonhousehold members specified in paragraphs (a)(2) (i) and (v) who are otherwise eligible may participate in the Program as separate households.

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotment in its State supplemental payments. These persons are not eligible for Food Distribution Program benefits.

(iii) *Disqualified individuals.* Individuals disqualified from the Food Stamp Program for fraud, as set forth in § 273.16.

(iv) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program, persons receiving food distribution benefits must be lawfully living in the United States.

(v) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(3) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for commodities and/or obtaining commodities as provided in § 283.7(a)(10)(i) and § 283.7(a)(10)(ii) respectively.

(b) *Residency or citizenship.* (1) A household must be living on the reservation in which it files an application for participation, except that Indian tribal households need only be living near the reservation for participation purposes. Residency shall not mean domicile nor shall the State agency impose any durational residency requirement. However, persons on the reservation solely for vacations shall not be considered residents. No household may participate in the Food Stamp Program or in the Food Distribution Program in more than one geographical area at the same time.

(2) No person shall participate in the Food Distribution Program on an Indian reservation unless the person is legally a resident of the United States. A further discussion of "legal residency" is provided in § 283.6(a)(3)(iv).

(c) *Income and resource eligibility standards of public assistance, supplemental security income, and certain* *general assistance households.* (1) Households in which all members are included in a federally aided public assistance or supplemental security income grant, except as provided for in § 283.6(a)(2)(ii), shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of the household members.

(2) If FNS determines that a State or local general assistance program applies criteria of need the same as or similar to, those applied under any of the federally aided public assistance programs, households in which all members are included in such a general assistance grant, shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income and resources of household members.

(d) *Resource eligibility standards*—(1) *Uniform household standards for nonassistance households.* The State agency shall apply uniform national resource standards of eligibility to all applicant households, except those in which all members are recipients of federally aided public assistance, supplemental security income, or certain general assistance program benefits as provided in paragraph (c)(2) of this section. The maximum allowable resources shall not exceed $1,750 for the household; except that, for households of two or more members which include a member or members age 60 or over, such resources shall not exceed $3,000.

(2) *Resources.* In determining the resources of a household, only cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable and accessible certificates or instruments shall be counted; except that the following resources shall be entirely excluded:

(i) The cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an Individual Retirement Account (IRA), as long as the funds remain in the pension plans.

(ii) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended, for example payments made by the Department of Housing and Urban Development through the individual and family grant program of disaster loans or grants made by the Small Business Administration.

(iii) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of self-employment income is explained in § 283.7(b)(1)(iii).

(iv) Resources which are excluded by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(A) Payment received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a) or the Sac and Fox Indian claims agreement Pub. L. 94-189);

(B) Payments received by certain Indian tribal members under Pub. L. 94-114, section 6, regarding submarginal land held in trust by the United States;

(C) Payments received by certain Indian tribal members under Pub. L. 94-540 regarding the Grand River Bank of Ottawa Indians;

(D) Reimbursements from the Uniform Relocation Assistance and Real Property Acquistion Policy Act of 1970 (Pub. L. 91-646, section 216);

(E) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95-600, the Revenue Act of 1978.

(F) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524).

(3) *Jointly owned resources.* Resources owned jointly by separate households shall be prorated between or among those households unless the applicant can demonstrate that such resources are inaccessible to it because

access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

(4) *Resources of disqualified members.* Resources of individuals disqualified from participation in the Food Stamp Program for fraud shall continue to count in their entirety to the remaining household members when determining the household's eligibility for the Food Distribution Program.

(e) *Income*—(1) *Income eligibility standards for nonassistance households.* (i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, supplemental security income except as provided for in § 283.6(a)(2)(ii) or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the monthly income eligibility standards for the Food Stamp Program in the State, increased by the amount of the standard deduction for that State, as published in the appendix to § 273.9.

(ii) The income eligibility standards for the Food Distribution Program shall be adjusted each January 1 and July 1, as necessary, to reflect changes in the Food Stamp Program income eligibility limits and standard deductions.

(2) *Definition of income.* Household income shall mean all income from whatever source, excluding only items specified in paragraph (e)(3) of this section.

(i) Earned income shall include:

(A) All wages and salaries of an employee.

(B) The total gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Ownership of rental property shall be considered a self-employment enterprise. Payments from a roomer and returns on rental property shall be considered self-employment income.

(C) Training allowances from vocational and rehabilitative programs recognized by Federal, State or local governments, such as the Work Incentive Program, and programs authorized by the Comprehensive Employment and Training Act, to the extent they are not a reimbursement.

(ii) Unearned income shall include, but not be limited to:

(A) Assistance payments from Federal or Federally aided public assistance programs, such as Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC), General Assistance (GA) programs, or other assistance programs based on need.

(B) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults.

(C) Support or alimony payments made directly to the household from nonhousehold members.

(D) Scholarships, education grants, fellowships, deferred payment loans for education, veteran's education benefit and the like in excess of amounts excluded under paragraph (e)(3)(iii) of this section.

(E) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(F) The earned or unearned income of an individual disqualified from participation in the Food Stamp Program for fraud shall continue to be counted as income, less the pro rata share for the disqualified member. Procedures for calculating this pro rata share are described in § 283.7.

(iii) Income shall not include the following:

(A) Monies withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned to repay a prior overpayment received from that income source.

(B) Child support payments received by AFDC recipients which must be transferred to the agency administering Title IV-D of the Social Security Act of 1935, as amended, to maintain AFDC eligibility.

(3) *Income exclusions.* Only the following items shall be excluded from

household income and no other income shall be disregarded:

(i) Any gain or benefit which is not in the form of money payable directly to the household, including:

(A) *In-kind income.* Nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(B) *Vendor payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative, who is not a household member, pays out of its own resources the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Also, payments specified by a court order or other written support or alimony agreement to go directly to a third party rather than the household and support payments which are paid to a third party are excluded as vendor payments. Wages garnished or diverted by employers, or money deducted or otherwise diverted from a household's public assistance grant by a State for purposes such as managing the household's expenses, shall not be considered a vendor payment, since the person or organization making the the payment is using money payable to the household rather than its own funds.

(ii) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(iii) Education loans on which payment is deferred, grants scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformly charged to all students and, therefore, would not be excluded as mandatory fees.

(iv) All loans, including loans from private individuals as well as commercial institutions, other than education loans on which repayment is deferred.

(v) Reimbursements for past or future expenses to the extent they do not exceed actual expenses. For example, reimbursements of flat allowances for job or training related expenses such as travel per diem, uniforms, and transportation to and from the job or training site are excluded as income.

(vi) Monies received and used for care and maintenance of a third party beneficiary who is not a household member.

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vaction breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(viii) Money received in the form of a nonrecurring lump sum payment, including but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits or other payments, or retroactive lump-sum insurance settlements; refunds of security deposits on rental properties or utilities or lump-sum payments arising from land interests held in trust for, or by, a tribe. These payments shall be counted as resources in the month received unless specifically excluded from consideration as a resource by other Federal law.

(ix) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 283.7(b)(1)(iii).

(x) Any income that is specifically excluded by any other Federal statute from consideration as income. The following Federal statutes provide such an exclusion.

(A) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(B) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a)).

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and Title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under Title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated commodities, food stamps, or public assistance at the time they joined the Title I program, except that households which are receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving federally donated commodities, food stamps or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

(D) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).

(E) Payments received by certain Indian tribal members under Pub. L. 94-540 regarding the Grand River Band of Ottawa Indians.

(F) Payments from the Crisis Intervention Program (CIP) administered by the Community Services Administration (CSA).

(G) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524).

(f) *Income deductions.* (1) Households with earned income, as defined in paragraph (e)(2)(i) of this section, shall be allowed a deduction of twenty percent of their earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment. This deduction shall not exceed the maximum allowable deduction for dependent care costs allowable under the Food Stamp Program in the 48 States and the District of Columbia.

§ 253.7 Certification of households.

(a) *Application processing*—(1) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications. Expedited service shall be available to household in immediate need. When the State agency is other than the ITO, the ITO, when appropriate, may receive copies of certification and/or termination notices to the extent requested or agreed upon by the household. State agencies and ITOs may develop formalized mechanisms to ensure ITO receipt of notices.

(2) *Food Distribution Program application form.* The State agency shall use an application form acceptable to FNS. The State agency shall consult with the ITO in developing the application form. The State agency shall make application forms readily accessible to potentially eligible households and those groups or organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form. State agencies which elect joint PA or GA/Food Distribution Program procedures shall follow the requirements of § 283.7(f) for the application

form. State agencies may also use an abbreviated recertification form.

(3) *Filing an application.* Households must file an application for the Food Distribution Program by submitting the form to a certification office in person, through an authorized representative or by mail. The State agency shall document the date the application was received. Each household has the right to file an application form the same day it contacts the certification office during office hours on the reservation where the household resides. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the application contains the applicant's name and address and is signed by a responsible member of the household or the household's authorized representative.

(4) *Household cooperation.* To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied upon a determination of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed and not merely fail to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied solely for this reason. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.

(5) *Interviews.* All applicant households, including those submitting applications by mail, shall have an interview with a qualified eligibility worker prior to initial certification and all recertifications. At State agency discretion, applicants may be interviewed by telephone or in the home. No household shall be interviewed by telephone for any two consecutive certifications without a face-to-face interview. State agencies must attempt to schedule home visits in advance. Home visits cannot extend required processing standards set forth in § 283.7(a)(7) or § 283.7(a)(9). The individual interviewed may be the head of household, spouse, any other responsible member of the household or an authorized representative. The household, if it wishes, may be accompanied to the interview by anyone of its choice. The interviewer shall not only review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(6) *Verification.* Verification is the use of third party information or documentation to establish the accuracy of statements on the application in order to determine eligibility or ineligibility of the household.

(i) *Mandatory verification.* Gross nonexempt income shall be verified for all households prior to certification. Income verification need not be to the exact dollar amount unless the household's eligibility would be affected since benefits are not reduced as income rises in the Food Distribution Program. However, where all attempts to verify the income have been unsuccessful either because the person or organization providing the income has failed to cooperate with the household and the State agency or because the other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Verification of questionable information.* Eligibility criteria other than income, including residency on or near the reservation, shall be verified prior to certification only if they are questionable. To be considered questionable, the information on the application must be inconsistent with statements by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with other information received by the State agency. However, due to the difficulty in verifying whether a group of individuals is a household, State agencies shall generally accept the household's statement regarding food preparation and consumption.

(iii) *Responsibility for obtaining verification.* The household has primary responsibility for providing documentary evidence or an acceptable collateral contact to support its income statements and to resolve any questionable information. However, the State agency shall assist the household in obtaining the needed verification. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. The State agency shall also accept verification from collateral contacts so long as the collateral contacts can provide accurate third party verification. The State agency shall rely on the household to provide the name of the collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third party verification. If the collateral contact designated by the household is unacceptable to the State agency, the State agency shall ask the household to designate another collateral contact, and the State agency shall document the casefile as to the reason the collateral contact was rejected and an alternate was requested. The State agency shall use collateral contacts, rather than documentary evidence, for verification if such verification is acceptable, and would result in better service to the household. For example, the household may be able to obtain a wage stub from the employer, but the State agency could call the employer the same day to provide the verification of income. Home visits shall be used as verification only if documentary evidence and collateral contacts cannot be obtained, and the State agency attempts to schedule the visit in advance with the household.

(iv) *Documentation.* Casefiles must be documented to support a determination of eligibility or denial. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50 per month since the last time the income was verified. State agencies may verify income which is unchanged or has changed by $50 per month or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

(7) *Processing standards.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than seven calendar days excluding weekends and holidays after the application was filed. An application is filed the day the State agency receives an application containing the applicant's name and address and which is signed by either a responsible member of the household or the household's authorized representative.

(8) *Delays in processing.* If the State agency cannot determine a household's eligibility within seven calendar days excluding weekends and holidays of the date the application was filed due to lack of verification as required in paragraph (a)(6) of this section, the

State agency shall authorize the distribution of commodities to the household for one month pending verification. In order to certify the household pending verification, the information on the application form must be complete and indicate that the household will likely be eligible. No further distribution of commodities shall be made without completing the eligibility determination.

(9) *Expedited service.* The State agency shall provide an opportunity to obtain commodities within one calendar day excluding weekends and holidays after the date the application was filed for those households with no income in the current month and also for those households which, in the judgment of the certifying agency, would likely be eligible and would otherwise suffer a hardship. The basis for this determination shall be recorded in the casefile. State agencies shall provide same day service, if possible, to households eligible for expedited service which would likely suffer a hardship if required to return to the office the next day. Warehouses or other distribution points need not be open during all certification hours to meet this need. However, accessibility to federally donated commodities by appropriate certification or other personnel should be established for households in immediate need. When State agencies can demonstrate a need, FNS may approve other expedited timeframes based on circumstances such as distance to warehouses or other distribution points. To expedite the certification of households in immediate need the State agency shall postpone the verification required under paragraph (a)(6) of this section. However, the State agency shall verify the household's identity and address through a collateral contact or readily available documentary evidence. If possible, the household's income statements should be verified at the same time. The State agency shall complete the verification for households certified on an expedited basis prior to the distribution of commodities to the household for any subsequent month.

(10) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for commodities.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated in writing as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. Adults who are nonhousehold members may be designated as authorized representatives for certification purposes only if they are sufficiently aware of relevant household circumstances.

(ii) *Obtaining commodities.* An authorized representative of the household may be designated to obtain commodities. Designation shall be made at the time the application is completed except that the household may be permitted to designate an emergency authorized representative in the event that illness or other unforeseen circumstances prevent the household from otherwise obtaining commodities. Designation of an emergency authorized representative must be made in writing by a responsible member of the household. State agencies may distribute commodities to household members or authorized representatives presenting an identification card or other appropriate identification that satisfactorily identifies the member obtaining commodities.

(b) *Eligibility determinations*—(1) *Determining income.* (i) The State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that is anticipated is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These monies shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, and the household's income is close to the income eligibility limit the State agency may elect to average income provided that such averaging does not disadvantage the household. Such averaging shall be based on income that is anticipated to be available to the household during the certification period. The State agency shall use income received in the past 30 days as an indicator of future income during the certification period unless changes in income have occurred or can be anticipated.

(ii) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged.

(iii)(A) Self-employment income which represents a household's annual support including the net profit from the sale of any capital goods or equipment related to the business shall be annualized over a 12-month period, even if the income is received in only a short period of time. For example, self-employment income received by farmers shall be averaged over a 12-month period if the income represents the farmer's annual support.

(B) Self-employment income which represents only a part of a household's annual support, including the net profit from the sale of any capital goods or equipment related to the business, shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(C) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income, exclude the cost of producing the self-employment income and divide the net self-employment income by the number of months over which the income will be averaged. The allowable costs of producing self-employment income include but are not limited to, the identifiable costs of labor, stock, raw materials, seed and fertilizer, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

(D) In determining net self-employment income, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods, net losses from previous periods, Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work) will not be allowable costs of doing business.

(iv) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household.

(v) Allowable costs for dependent care shall be subtracted from the household's total monthly income to determine net monthly income.

(vi) The total net monthly income shall be compared to the income eligibility standard for the appropriate household size to determine the household's eligibility.

(2) *Certification periods.* (i) The State agency shall establish definite periods of time within which households shall be eligible to receive benefits. Further eligibility shall be established upon a recertification based upon a newly completed application, an interview, and such verification as required by paragraph (a)(6)(v) of this section.

(ii) Certification periods shall conform to calendar months. The first month in the certification period of initial applicants shall be the month in which eligibility is determined. For example, if a household submits an application in late January and the household is determined eligible on the fifth working day which falls in February, a six-month certification period would include February through July. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(iii) A household shall be assigned a certification period for as long a period as the household's circumstances are expected to remain sufficiently stable such that the household is expected to continue to meet the program's eligibility standards. In no event shall a certification period exceed one year.

(3) *Certification notices*—(i) *Notice of eligibility.* If an application is approved, the State agency shall provide the household a written notice of eligibility and the beginning and ending dates of the certification period. Households certified on an expedited basis shall be advised that the subsequent month's eligibility will depend upon completion of the postponed verification.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household written notice explaining the basis for the denial, the household's right to request a fair hearing, and the telephone number and address of the person to contact for additional information. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service.

(iii) *Notice of adverse action.* (A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to the Food Stamp Program, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken.

(B) In State agencies that have elected joint public assistance or general assistance and Food Distribution processing, the notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public or general assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. In circumstances other than joint processing, the advance notice shall be considered timely if the advance notice period includes at least 10 and no more than 20 days from the date the notice is mailed to the date upon which the action becomes effective.

(C) The notice of adverse action shall be considered adequate if it explains in easily understandable language: the reason for the proposed action, the household's right to request a fair hearing, when the proposed action will take effect, the telephone number and address of someone to contact for additional information and the availability of continued benefits. If there is an individual or organization available which provides free legal representation, the notice shall also advise the household of the availability of the service. The State agency shall consult with the ITO in developing the notice of adverse action.

(D) The State agency shall continue distribution of commodities to the household after the end of the adverse notice period if the household requests a fair hearing during the advance notice period.

(c) *Reporting changes.* (1) Certified households are required to report changes in household composition and income which would necessitate a change in the determination of eligibility. To facilitate reporting changes in income each certified household shall be advised at the time of certification what the maximum monthly income limit, as defined in § 283.6(e)(1), is for its size household, and shall be required to report any change in income that goes above that limit to the certification office within ten days after the change becomes known to the household. Households must also report within ten days when cash on hand, money in checking or savings accounts, savings certificates, stocks, or bonds, or other readily negotiable instruments exceeds $1,750. The State agency shall develop the procedures for when and how changes in household circumstances are reported. Changes reported over the telephone or in person shall be acted on in the same manner as those reported in writing.

(2) If the State agency determines that the household is no longer eligible or reduces the amount of commodities due the household because the household has lost a member or members, the State agency shall provide the household with a notice of adverse action not later than ten days after the change is reported. If the reported change increases the amount of commodities due the household, the household shall be notified that the increase shall be effective not later than the month following the date the change was reported.

(d) *Recertification.* (1) The State agency shall develop a procedure for notifying the household prior to or shortly after the end of its certification period that the household must reapply and be recertified for continued participation. Households shall also be notified of the date upon which termination from participation will be effective should the household fail to reapply before the expiration of the certification period.

(2) The State agency shall approve or deny a household's application for recertification and notify the household of that determination prior to the expiration of the household's current certification period. Households applying for recertification in the last month of the current certification period must be provided an opportunity to obtain commodity distribution on an uninterrupted basis.

(3) The State agency shall continue distribution of commodities to the household denied at the point of recertification if the household timely requests a fair hearing.

(e) *Controls for dual participation*—(1) *Prohibition on dual participation.* No household shall be allowed to participate simultaneously in the Food Stamp Program and Food Distribution Program. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified households provided by and provided to the appropriate food stamp agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate food stamp agency or agencies in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either the Food Stamp Program or Food Distribution Program on reservations on which both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation, and notifying the State agency of their intention to switch programs. Households certified in either the Food Distribution or Food Stamp Program on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household elects to change programs the household should notify the State agency of its intent to switch programs, and should file an application for the program in which it wishes to participate. Households voluntarily withdrawing from one program with the intent of switching to the other shall have their eligibility terminated for the program in which they are currently certified on the last day of the month in which the household notifies the State agency of its intent to change programs. Entitlement in the program for which a household is now filing an application, if all eligibility criteria are met, would begin in the month following the

month of termination in the previous program.

(3) *Disqualification.* (i) No individual disqualified from participation in the Food Stamp Program for fraud may participate in the Food Distribution Program until the period of disqualification expires. The State agency in cooperation with the appropriate food stamp agency must develop a procedure to identify these individuals.

(ii) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members shall be determined as follows:

(A) *Resources.* The resources of the disqualified member shall continue to count in their entirety to the remaining household members.

(B) *Income.* A pro rata share of the income of the disqualified member shall be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(C) *Eligibility and benefits.* The disqualified member shall not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

(f) *Joint processing PA/GA.* (1) State agencies which are responsible for and administer both the Food Distribution and public assistance (PA) or general assistance (GA) programs on Indian reservations may allow a household to apply for the Food Distribution Program at the same time the household applies for PA or GA benefits. However, while PA households are categorically eligible, GA households except for those households in GA programs which have been determined by FNS to have criteria of need the same as, or similiar to those under federally aided public assistance programs as provided for in § 283.6(c)(2) shall have their eligibility for commodities based solely on Food Distribution eligibility criteria. All criteria provided in this paragraph (f), are applicable to State agencies which administer both the Food Distribution and assistance programs and which elect joint processing. Under joint processing, the State agency shall use joint application forms that contain all the information needed to determine eligibility for commodities or shall attach a form for the other needed information.

(2) The State agency shall process all applications for PA or GA as applications for the Food Distribution Program as well, unless the household clearly indicates on a space on the application that the household does not want commodities. The State agency shall conduct a single interview for PA or GA and Food Distribution Program eligibility, unless the State agency is unable to do so within the Food Distribution Program processing standards specified in § 283.7(a)(7) and § 283.7(a)(9). In such cases the State agency shall provide separate certification for PA or GA and Food Distribution Program eligibility.

(3) The State agency may verify those factors of eligibility which must be verified for PA or GA, under PA or GA rules, but must follow the Food Distribution Program rules for all other factors.

(4) PA households have the same reporting requirements as any other food distribution household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food distribution purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food distribution cases are processed jointly.

(5) The State agency must follow all Food Distribution Program timeliness rules for certification of households for the Food Distribution Program.

(g) *Fair hearing*—(1) *Availability of hearings.* The State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Food Distribution Program.

(2) *Timely action on hearings*—(i) *Receipt of request.* Within 60 days of receipt of a request for a fair hearing, the State agency shall conduct the hearing, arrive at a decision and either issue or not issue commodities to the household.

(ii) *Household requests for postponement.* The household may request and is entitled to receive, a postponement of the scheduled hearing. The postponement shall not exceed 30 days and, the time limit for action on the decision may be extended for as many days as the hearing is postponed.

(3) *Notification of right to request hearing.* At the time of application, each household shall be informed of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. If there is an individual or organization available which provides free legal representation, the household shall also be informed of the availability of that service. Hearing procedures shall be published by the State agency and made available to any interested party.

(4) *Time period for requesting hearing.* A household shall be allowed to request a heazing on any action by the State agency which occurred in the prior 90 days or which affects current benefits.

(5) *Request for hearing.* A request for a hearing is any clear expression, oral or written, by the household or its representative to the State agency that it wishes to present its case to a higher authority. The freedom to make such a request shall not be limited or interfered with in any way. Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing.

(6) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(i) The request is not received within the time period specified in paragraph (g)(4) of this section;

(ii) The request is withdrawn in writing by the household or its representative; or

(iii) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(7) *Notification of time and place of hearing.* The time, date and place of the hearing shall be convenient to the household. At least 15 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. The notice shall:

(i) Advise the household or its representative of the name, address, and the phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(ii) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(iii) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings, and that would contribute to the effective presentation of the household's case.

(iv) Explain that the household or representative may examine the casefile prior to the hearing.

(8) *Hearing official.* Hearings shall be conducted by an impartial official(s), designated by the State agency, who does not have any personal interest or involvement in the case and who was not directly involved in the initial determination of the action which is being contested. The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Ensure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

(v) Render a hearing decision in the name of the State agency, in accordance with paragraph (g)(11) of this section, which will resolve the dispute.

(9) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household upon household consent.

(10) *Conduct of hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a manner that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(i) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing, as well as during the hearing. The contents of the casefile, including the application forms and documents of verification used by the State agency shall be made available, provided the confidential information is protected from release. The State agency shall provide a free copy of the relevant portions of the casefile if requested by the household or its representative. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(ii) Present the case or have it presented by a legal counsel or other person.

(iii) Bring witnesses.

(iv) Advance arguments without undue interference.

(v) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(vi) Submit evidence to establish all pertinent facts and circumstances in the case.

(11) *Hearing decisions.* (i) Decisions of the hearing officials shall comply with Federal law or regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing official.

(ii) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision and identify the supporting evidence and the pertinent FNS regulations. The decision shall become a part of the record.

(iii) The household shall be advised of the decision of the hearing official and of the right to pursue judicial review.

(12) *Agency conferences.* (i) The State agency shall offer agency conferences to households which request an immediate resolution by a higher authority of a denial of eligibility for food distribution benefits. The State agency may also offer agency conferences to households adversely affected by any agency action. The State agency shall advise households that use of an agency conference is optional and that such use shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supevisor and/or the agency director, as well as the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held if requested by the household.

(ii) An agency conference for households requesting an immediate resolution by a higher authority of an eligibility issue shall be scheduled within four working days of the request unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(Approved by the Office of Management and Budget under control number 0584-0071)

(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

§ 253.8 Commodity control, storage and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of commodities to households and the control of and accountability for the commodities upon its acceptance of the commodities at time and place of delivery.

(b) *Commodity inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of commodity inventories at central commodity storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that commodity inventories at each central storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of commodities.

(c) *Storage facilities and practices.* The State agency shall as a minimum ensure that:

(1) Adequate and appropriate storage facilities are maintained. The facilities shall be clean and neat and safe-guarded against theft, damage, insects, rodents and other pests.

(2) Department recommended dunnage, stacking and ventilation methods are followed.

(3) Commodities are stacked in a manner which facilitates an accurate inventory.

(4) Commodities are issued on a first-in, first-out basis.

(5) Commodities held in storage for a protracted period of time are reinspected prior to issuance.

(6) Out-of-condition commodities are disposed of in accordance with Department approved methods.

(7) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(8) An adequate supply of commodities which are available from the Department is on hand at all distribution sites.

(9) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(10) Days and hours of distribution are sufficient for caseload size and convenience.

(11) Households are advised they may refuse any commodity not desired, even if the commodities are prepackaged by household size.

(12) Emergency issuance of commodities will be made to households certified for expedited service in accordance with the provisions of § 283.7(b)(9).

(13) Eligible households or authorized representatives are identified prior to the issuance of commodities.

(14) Authorized signatures are obtained for commodities issued and the issue date recorded.

(15) Posters are conspicuously displayed advising program participants to accept only those commodities, and in such quantities, as will be consumed by them.

(16) Complete and current records are kept of all commodities received, issued, transferred, and on hand and of any inventory overages, shortages, and losses.

(17) A list of commodities offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(d) *Distribution.* The State agency shall distribute commodities only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service or similar organization to effect or assist in the certification of households or distribution of commodities, the State agency shall impose upon such organization responsibility for determining that households to whom commodities are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and control of the Food Distribution Program.

(e) *Improper distribution or loss of or damage of commodities.* State agencies shall take action to obtain restitution in connection with claims arising

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in their favor for improper distribution, use or loss, or damage of commodities in accordance with the State agency's agreement with the Department under § 250.6(b) of Part 250 of this chapter and the requirements of § 250.6(l) of this same chapter.

(f) *Damaged or out-of-condition commodities.* The State agency shall immediately notify the appropriate Food and Nutrition Service Regional Office (FNSRO) if any commodities are found to be damaged or out-of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. FNSRO shall advise the State agency of the appropriate action to be taken with regard to such commodities. If the commodities are declared unfit for human consumption in accordance with § 250.7 of Part 250 of this chapter, they shall be disposed of as provided for under that section. When out-of-condition commodities do not create a hazard to other food at the same location, they shall not be disposed of until FNSRO or the responsible commodity contractor approves. When circumstances require prior disposal of a commodity, the quantity and manner of disposition shall be reported to the appropriate FNSRO. If any damaged or out-of-condition commodities are inadvertently issued to a household and are rejected or returned by the household because the commodities were unsound at the time of issuance and not because the household failed to provide proper storage, care or handling, the State agency shall replace the damaged or out-of-condition commodities with the same or similar kind of commodities which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

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(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated by Amdt. 1, 47 FR 14137, Apr. 2, 1982]

§ 253.9 Administrative funds for State agencies.

(a) *Payments.* Within the limitation of funds available to carry out the provisions of this part, FNS shall, beginning with fiscal year 1980, make available to each State agency 75 percent of approved administrative costs. Any approval for payment of funds in excess of 75 percent shall be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Distribution Program on an Indian reservation. Compelling justification may include, but not be limited to, such factors as the need for a larger Federal contribution during a State agency's first year of operation of the program, and the need to assure that no State agency currently operating the program receives a level of funding that would cause a diminution of program services. Administrative costs must be included in annual or revised budget information submitted by the State agency to FNS for approval prior to the contribution of Federal funds. Administrative costs must be allowable under Part 277 of this chapter.

(b) *Use of funds by State agencies.* Any funds received under this section shall be used for any costs which are allowable under Part 277 of this chapter and which are incurred in operating the Food Distribution Program for households on a reservation. The value of services rendered by volunteers, Part 277 notwithstanding, shall be allowable to meet the matching administrative costs requirements for the Food Distribution Program. In no event shall such funds be used to pay any portion of such expenses if reimbursement or payment therefor is claimed or made available from any other Federal source. State agencies shall also adhere to the provisions of Part 277 of this chapter, as apply to the Food Distribution Program, which establish:

(1) Uniform requirements for the adminstration of funds to State agencies; and

(2) Principles for determining costs applicable to activities assisted by the Food Stamp Program funds provided to State agencies. The provisions of

Part 277 are generally adaptable to this section and the appropriate provisions shall be used in complying with paragraphs (b) and (f) of this section.

(c) *Application for funds.* (1) Any State agency administering an ongoing Food Distribution Program which desires to receive administrative funds under this section shall submit a Form AD-623, "Application for Federal Assistance," to the appropriate FNS Regional Office at least three months prior to the beginning of a Federal fiscal year; except that, for funds needed during fiscal year 1980, the application shall be submitted as soon as practicable, but no later than 60 days followed final publication of this part in the FEDERAL REGISTER. The budget information required in Part III of the application shall reflect by category of expenditure the State agency's best estimate of the total amount to be expended in the administration of the Food Distribution Program during a Federal fiscal year. FNS may require that detailed information be submitted by the State agency to support or explain the total estimated amounts shown for each cost budget category. Prior to submission by an agency of State government of the AD-623 to FNS, it shall be submitted to the State clearinghouse pursuant to Part I of OMB Circular A-95. ITO's which act as State agencies are encouraged to submit the AD-623 to the State clearinghouse.

(2) Approval of the application by FNS shall be a prerequisite to the payment of any funds to State agencies.

(d) *Availability of funds.* (1) FNS shall review and evaluate the budget information submitted by the State agency in relationship to the State agency's plan of operation and any other factors which may be relevant to FNS' determination as to whether the estimated expenditures itemized by budget category are reasonable and justified. FNS shall give written notification to the State agency of (i) its approval or disapproval of any or all of the itemized expenditures, (ii) the amount of funds which will be made available, and (iii) the period for which funds are available.

(2) FNS shall review and evaluate applications submitted by State agencies for administrative funds available under this section in the following order of priority and shall give preference in making payments of funds under this section in the same order of priority:

(i) Applications from State agencies which desire to continue a Food Distribution Program now in operation, (ii) applications from State agencies, in the order received, which FNS determines are immediately capable of effectively and efficiently administering the Program, and (iii) applications from other States agencies, in the order received.

(e) *Method of payment to State agencies.* (1) Payments are made to State agencies through a Letter of Credit or an advance by Treasury check. The Letter of Credit funding method shall be used by FNS except when the advances to be made within a 12 month period are estimated to be less than $120,000. However, FNS may, at its option, reimburse a State agency by Treasury check regardless of the amount in response to a valid claim submitted by the State agency.

(2) The Letter of Credit funding method shall be done in conjunction with Treasury Department procedures, Treasury Circular No. 1075 and through an appropriate Treasury Regional Disbursing Office (RDO). The Standard Form 183, "Request for Payment on Letter of Credit and Status of Funds Report," shall be correctly prepared and certified by a duly appointed official of the State for requesting payment from an RDO.

(3) The advance by Treasury check method shall be done by use of the Standard Form 270, "Request for Advance or Reimbursement," and procedures associated with its use. State agencies receiving payments under this method may request payments before cash outlays are made.

(4) Any State agency receiving payment under the Letter of Credit method or the advance by Treasury check method shall have in place and in operation, a financial management system which meets the standards for fund control and accountability prescribed in Part 277 of this chapter, as amended. The State agency shall demonstrate on a continuing basis its will-

ingness and ability to have and to function within procedures that will minimize the time lapse between the transfer of funds and its disbursement to meet obligations. For any State agency which does not meet the requirement of this paragraph, the reimbursement by Treasury check method shall be the preferred method for FNS to make payments to that State agency.

(f) *Accounting for funds.* Each State agency which receives administrative funds under this section shall establish and maintain an effective system of fiscal control and accounting procedures. Expenditures and accountability of such funds shall be in accordance with the appropriate provisions of Part 277. The accounting procedures maintained by the State agency shall be such as to accurately reflect the receipt, expenditure and current balance of funds provided by FNS and to facilitate the prompt preparation of reports required by FNS. The accounting procedures shall also provide for segregation of costs specifically identifiable to the Food Distribution Program from any other costs incurred by the State agency. Any budget revisions by a State agency which require the transfer of funds from an approved cost category to another shall be in accordance with the budget revision procedures set forth in OMB Circular No. A-102, Attachment K, and shall be approved by FNS prior to any transfer of funds.

(g) *Return, reduction, and reallocation of funds.* (1) FNS may require State agencies to return prior to the end of the fiscal year any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to any State agency if FNS determines that:

(i) The State agency is not administering the Food Distribution Program in accordance with its plan of operation approved by FNS and the provisions of this part, or

(ii) The amount of funds which the State agency requested from FNS is in excess of actual need, based on reports of expenditures and current projections of Program needs.

(iii) Circumstances or conditions justify the return reallocation or transfer of funds to accomplish the purpose of this part.

(2) The State agency shall return to FNS within 90 days following the close of each Federal fiscal year any funds received under this section which are unobligated at that time.

(h) *Records, reports, audits.* (1) The State agency shall:

(i) Keep such accounts and records as may be necessary to enable FNS to determine whether there has been compliance with this section, and

(ii) Adhere to the retention and custodial requirements for records set forth in § 277.4 of this chapter.

(2) The State agency receiving funds either through a Treasury RDO Letter of Credit system or Treasury check shall submit quarterly reports to FNS on Form SF-269, "Financial Status Report," by the 30th day after close of the reporting quarter and shall submit such other reports as may be required by FNS.

(3) The appropriate provisions of Part 277 are adaptable to this section for additional guidance.

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PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

Sec.

254.1 General purpose.
254.2 Definitions.
254.3 Administration by an ITO.
254.4 Application by an ITO.
254.5 Household eligibility.

AUTHORITY: Pub. L. 97-98, sec. 1338; Pub. L. 95-113.

SOURCE: 49 FR 32756, Aug. 16, 1984, unless otherwise noted.

§ 254.1 General purpose.

This part sets the requirement under which commodities (available under Part 250 of this chapter) may be distributed to households residing in FNS service areas in Oklahoma. This part also sets the conditions for administration of the Food Distribution Program by eligible Oklahoma tribes determined capable by the Department.

§ 254.2 Definitions.

(a) "Exercises governmental jurisdiction" means the exercise of authorities granted to ITOs under the Oklahoma Indian Welfare Act of 1936 or by BIA regulations (25 CFR Part 81 et. seq.).

(b) "FNS service area" means the areas over which FNS has approved the food distribution program in Oklahoma, excluding urban places unless approved by FNS under 254.5(b).

(c) "Food Distribution Program" means a food distribution program for households on Indian reservations administered pursuant to Section 4(b) of the Food Stamp Act and 1304(a) of Pub. L. 97-98.

(d) "Indian tribal household" means a household in which at least one adult household member is recognized as an Indian by an ITO.

(e) "Indian tribal organization (ITO)" means (1) any Indian tribe, band, or group organized under the Oklahoma Indian Welfare Act of 1936, and which has a tribal organization approved by the Bureau of Indian Affairs; (2) a tribal organization established and approved under Federal regulations issued by the Bureau of Indian Affairs; or (3) an intertribal council authorized by eligible tribes to act in behalf of the tribes to operate the program.

(f) "State agency" means the ITO of an Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, or an agency of State government, which enters into an agreement with FNS for the distribution of commodities on an Indian reservation.

(g) "Urban place" means a town or city with a population of 10,000 or more.

§ 254.3 Administration by an ITO.

(a) *Applicability of Part 253.* All of the provisions of Part 253 are herein incorporated and apply to Part 254, except as specifically modified by Part 254.

(b) Section 253.4 Administration, does not apply and is replaced by § 254.3.

(c) *Federal Administration.* Within the Department of Agriculture, the Food and Nutrition Service (FNS), shall be responsible for the Food Distribution Program. FNS shall have the power to determine the amount of any claim and to settle and adjust any claim against an ITO.

(d) *ITO Administration.* The ITO, acting as State agency, shall be responsible for the Food Distribution Program within the approved FNS service areas if FNS determines the ITO capable of effective and efficient administration.

(e) *Qualification as an ITO.* The ITO of a tribe in Oklahoma must document to the satisfaction of FNS that the ITO meets the definition of an ITO in § 254.2, is organized under the provisions of the Oklahoma Indian Welfare Act of 1936 or has a tribal organization established and approved under BIA regulations.

(The information collection requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 0584-0316)

§ 254.4 Application by an ITO.

(a) *Application to FNS Regional Office.* An ITO which desires to participate in the Food Distribution Program shall file an application with the FNS Regional Office. The application shall also provide other information requested by FNS, including but not limited to, the tribe's qualification as a reservation as described in § 254.2, paragraph (f). Properly addressed applications shall be acknowledged by the FNS Regional Office in writing within five working days of receipt. FNS shall promptly advise ITOs of the need for additional information if an incomplete application is received.

(b) *Tribal capability.* (1) In determining whether the ITO is potentially capable of effectively and efficiently administering a Food Distribution Program in an FNS Service area, allowing for fulfillment of that potential through training and technical assistance, FNS shall consult with other sources such as the BIA, and shall consider the ITO experience, if any, in operating other government programs, as well as its management and fiscal capabilities. Other factors for evaluation include, but are not limited to, the ITO's ability to:

(i) Order and properly store commodities,

(ii) Certify eligible households,

(iii) Arrange for physical issuance of commodities,

(iv) Keep appropriate records and submit required reports,

(v) Budget and account for administrative funds,

(vi) Determine the food preferences of households, and

(vii) Conduct on-site reviews of certification and distribution procedures and practices.

(2) FNS shall make a determination of potential ITO capability within 60 days of receipt of a completed application for the Food Distribution Program. FNS may, however, extend the period for determination of ITO capability if FNS finds that a given ITO's eligibility under § 254.3 is difficult to establish.

(3) FNS shall, if requested by an ITO which has been determined by FNS to be potentially capable of administering a Food Distribution Program, provide the ITO's designees with appropriate training and technical assistance to prepare the ITO to take over program administration. In determining what training and technical assistance are necessary, FNS shall consult with the ITO and other sources, such as the BIA.

(c) *Most capable tribe.* In cases where two or more applicant tribe(s) have overlapping boundaries, FNS shall select the tribe most capable of administering a FDP within that service area.

(The information collection requirements contained in paragaph (a) were approved by the Office of Management and Budget under control number 0584-0316)

§ 254.5 Household eligibility.

(a) *Certification procedures.* All applicant households shall be certified in accordance with the eligibility and certification provisions in § 253.6 and § 253.7.

(b) *Urban places.* No household living in an urban place in Oklahoma shall be eligible for the Food Distribution Program on Indian Reservations. However, an ITO can request the Department to grant individual exemptions from this limitation upon proper justification submitted by the ITO as determined by FNS. Such exceptions shall be available until September 30, 1985.

(c) *Eligible households.* Only Indian tribal households, as defined in § 254.2, may be eligible for the Food Distribution Program in FNS service areas.

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 0584-0316)

SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM

PART 271—GENERAL INFORMATION AND DEFINITIONS

Sec.

271.1 General purpose and scope.
271.2 Definitions.
271.3 Delegations to FNS for administration.
271.4 Delegations to State agencies for administration.
271.5 Coupons as obligations of the United States, crimes and offenses.
271.6 Complaint procedure.
271.7 Allotment reduction procedures.
271.8 Information collection/recordkeeping—OMB assigned control numbers.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027), unless otherwise noted.

§ 271.1 General purpose and scope.

(a) *Purpose of the food stamp program.* The food stamp program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

> Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) *Scope of the regulations.* Part 271 contains general information, definitions, and other material applicable to all parts of this subchapter. Part 272 sets forth policies and procedures governing State agencies which participate in the program. Part 273 describes the eligibility criteria to be applied by State agencies and related processing requirements and standards. Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities. Part 275 sets forth guidelines for monitoring the food stamp program, analyzing the results and formulating corrective action. Part 276 establishes State agency liability and certain Federal sanctions. Part 277 outlines procedures for payment of administrative costs of State agencies. Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services, and insured financial institutions. Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers, and meal services. Part 280 explains procedures for issuing emergency coupon allotments to certain victims of disasters unable to purchase adequate amounts of food. Part 281 sets forth guidelines for designating Indian tribes as State agencies. Part 282 provides guidelines for initiation, selection, and operation of demonstration, research, and evaluation projects. Part 285 describes the general terms and conditions under which grant funds are provided to the Commonwealth of Puerto Rico.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47882, Oct. 17, 1982, as amended by Amdt. 216, 47 FR 23461, May 28, 1982; Amdt. 248, 48 FR 16832, Apr. 19, 1983]

§ 271.2 Definitions.

"*Active case*" means a household which was certified prior to, or during, the sample month and issued food stamp benefits for the sample month.

"*Active case error rate*" means an estimate of the proportion of cases with an error in the determination of eligibility or basis of issuance. This estimate will be expressed as a percentage of the completed active quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FNS as having certification rules that are significantly different from standard requirements.

"*Adequate notice*" in a Monthly Reporting and Retrospective Budgeting system means a written notice that includes a statement of the action the agency has taken or intends to take; the reason for the intended action; the household's right to request a fair hearing; the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and to have benefits restored to their previous level. If the 10-day period ends on a weekend or a holiday and a request is received the day after the weekend or holiday, the State agency shall consider the request to be timely.

"*Allotment*" means the total value of coupons a household is authorized to receive during each month or other time period.

"*Application form*" means: (1) The application form designed or approved by FNS, which is completed by a household member or authorized representative; or

(2) For households consisting solely of public assistance or general assistance recipients, it may also mean the application form used to apply for public assistance or general assistance, including attachments approved by FNS, which is completed by a household member or authorized representative.

"*Authorization to participate card (ATP)*" means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

"*Base Period*" means the first 6-month reporting period of each fiscal year.

"*Beginning month(s)*" in a Monthly Reporting and Retrospective Budgeting system means either the first month for which the household is certified for food stamps (where the State agency has adopted a one month accounting system) or the first month for which the household is certified for food stamps and the month thereafter (where the State agency has adopted a two month accounting system). For a household which applies for food stamps at the same time that it applies for AFDC and is eligible in both Programs, the State agency may extend the household an additional beginning month if necessary, to coincide with the household's AFDC budgeting system. Except for beginning months in sequence as described in the preceding sentences, a beginning month cannot be any month which immediately follows a month in which a household is certified.

"*Budget month*" in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month from which the State agency uses income and other circumstances of the household to calculate the household's food stamp allotment to be provided for the corresponding issuance month.

"*Bulk storage point*" means an office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the security and storage of food coupons.

"*Communal dining facility*" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

"*Coupon*" means any coupon, stamp or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

"*Coupon issuer*" means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

"*Deficiency*" means any aspect of a State's program operations determined to be out of compliance with the Food Stamp Act, FNS Regulations, or program requirements as contained in the State agency's manual, the State agency's approved Plan of Operation or other State agency plans.

"*Department*" means the U.S. Department of Agriculture.

"*Drug addiction or alcoholic treatment and rehabilitation program*" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Pub. L. 91-616, Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970 and Pub. L. 92-255, Drug Abuse Office and Treatment Act of 1972 as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. If an alcoholic treatment and rehabilitation program is located on an Indian reservation and the State does not certify or license reservation-based centers, approval to participate may be granted if the program either is funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) pursuant to Pub. L. 91-616 or was so funded and has subsequently been transferred to Indian Health Service (IHS) funding.

"*Elderly or disabled member*" means a member of a household who: (1) Is 60 years of age or older; (2) receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, XIV, or XVI of the Social Security Act; (3) is a veteran with a service-connected disability rated or paid as total under Title 38 of the United States Code or is considered in need or regular aid and attendance or permanently housebound under such title of the Code; (4) is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered to be permanently incapable of self-support under Title 38 of the United States Codes; or (5) is a surviving spouse or child of a veteran and entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code *and* has a disability considered permanently under section 221(i) of the Social Security Act. "*Entitled*" as used in this definition refers to those veterans' surviving spouses and children who are receiving the compensation or benefits stated or have been approved for such payments, but are not receiving them.

"*Eligible foods*" means (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining; (4) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households; (5) meals prepared and served by a group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or Title XVI of the Social Security Act; (6) meals prepared by and served by a shelter for battered women and children to its eligible residents; and (7) in the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing or shelter, nor firearms, ammunition or other explosives.

"*Error*" for active cases results when a determination is made by a quality control reviewer that a household which received food coupons during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an "error" means that the reviewer determines that the decision to deny or terminate a household was incorrect.

"*Exercises governmental jurisdiction*" means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

"*Federal fiscal year*" means a period of 12 calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

"*Firm's practice*" means the usual manner in which personnel of a firm or store accept food coupons as shown by the actions of the personnel at the time of the investigation.

"*FNS*" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"*Food Stamp Act*" means the Food Stamp Act of 1977 (Pub. L. 95-113), including any subsequent amendments thereto.

"*General assistance (GA)*" means cash assistance which is financed by State or local funds.

"*Group living arrangement*" means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled and receiving benefits under Title II or Title XVI of the Social Security Act.

"*House-to-house trade route*" means any retail food business operated from a truck, bus, pushcart, or other mobile vehicle.

"*Identification (ID) card*" means a card which identifies the bearer as eligible to receive and use food coupons.

"*Immigration and Naturalization Service (INS)*" means the Immigration and Naturalization Service, U.S. Department of Justice.

"*Indian tribe*" means: (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

"*Indian tribal organization (ITO)*" means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorizes to operate the Food Stamp Program or a Food Distribution Program on their behalf.

"*Institution of higher education*" means any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities and vocational or technical schools at the post-high school level.

"*Insured financial institution*" means a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC).

"*Issuance month*" in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month for which the State agency shall issue a food stamp allotment. Issuance is based upon income and circumstances in the corresponding budget month. In prospective budgeting, the budget month and issuance month are the same. In retrospective budgeting, the issuance month follows the budget month and the issuance month shall begin within 32 days after the end of the budget month.

"*Large project area*" means those project areas/management units with a monthly active caseload of more than 7,000 households based on the most current information available at the time the large project area review schedule is developed.

"*Low-income household*" means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

"*Management Evaluation (ME) reviews*" means reviews conducted by States at the project area level to determine if State agencies are administering and operating the Food Stamp Program in accordance with program requirements.

"*Management unit*" means an area based on a welfare district, region, or other administrative structure designated by the State agency and approved by FNS to be reviewed for ME review purposes.

"*Meal delivery service*" means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

"*Medicaid*" means medical assistance under Title XIX of the Social Security Act, as amended.

"*Medium project area*" means those project areas/management units with a monthly active caseload of 250 to 7,000 households based on the most current information available at the time the medium project area review schedule is developed.

"*National standard payment error rate*" means the weighted mean of all States' payment error rates during a base period.

"*Negative case*" means a household which was denied certification or whose food stamp benefits were terminated effective for the sample month.

"*Negative case error rate*" means an estimate of the proportion of denied or terminated cases where the hosuehold was incorrectly denied or terminated. This estimate will be expressed as a percentage of completed negative QC reviews excluding those cases denied based upon processing by SSA personnel or denied/terminated based upon the rules of certain demonstration projects.

"*Nonprofit cooperative food purchasing venture*" means any private nonprofit association of consumers whose members pool their resources to buy food.

"*Overissuance*" means the amount by which coupons issued to a household exceeds the amount it was eligible to receive.

"*Payment error rate*" means the sum of the allotments issued to eligible households to which they were not entitled and the allotments issued to ineligible households, expressed as a percentage of all allotments issued to complete active sample cases excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

"*Program*" means the food stamp program conducted under the Food Stamp Act and regulations.

"*Project area*" means the county or similar political subdivision designated by a State as the administrative unit for program operations. Upon prior FNS approval, a city, Indian reservation, welfare district, or any other entity with clearly defined geographic boundaries, or any combination of such entities, may be designated as a project area, or a State as a whole may be designated as a single project area.

"*Prospective budgeting*" in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on an estimate of income and circumstances which will exist in that month.

"*Public assistance (PA)*" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind, or disabled.

"*Quality control review*" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that negative cases are not incorrectly denied or terminated.

"*Regulations*" means the provisions of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

"*Reservation*" means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

"*Retail food store*" means (1) an establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; public or private nonprofit group living arrangements; or public or private nonprofit shelters for battered women and children; (3) any stores selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers' market.

"*Retrospective budgeting*" in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month, the "budget month."

"*Review date*" for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day the household was certified, whichever is later. The "review date" for negative cases is the date of the agency's decision to deny or terminate program benefits. For no case is the "review date" the day the QC review is conducted.

"*Review period*" means the 12-month period from October 1 of each calendar year through September 30 of the following calendar year.

"*Sample frame*" means a list of all units from which a sample is actually selected.

"*Sample month*" means the month of the sample frame from which a case is selected (e.g., for all cases selected from a frame consisting of households participating in January, the sample month is January).

"*Secretary*" means the Secretary of the U.S. Department of Agriculture.

"*Small project area*" means those project areas/management units with a monthly active caseload of less than 250 households based on the most current information available at the time the small project area review schedule is developed.

"*Shelter for battered women and children*" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

"*Spouse*" refers to either of two individuals:

(1) Who would be defined as married to each other under applicable State law; or

(2) Who are living together and are holding themselves out to the community as husband and wife by represent-

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ing themselves as such to relatives, friends, neighbors, or tradespeople.

"*SSA processed/demonstration case*" means a case that is participating or has been denied based upon processing by SSA personnel or is participating or has been denied/terminated based upon the rules of a demonstration project with significantly different certification rules (as identified by FNS).

"*Staple food*" means those food items intended for home preparation and consumption, which include meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store or as a wholesale food concern.

"*State*" means any one of the fifty States, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency.

"*State agency*" means: (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency, and (2) the Indian tribal organization of any Indian tribe determined by the Department to be capable of effectively administering a Food Stamp Program or a Food Distribution Program in accordance with provisions of the Food Stamp Act of 1977.

"*Sub-units*" means the physical location of an organizational entity within a project area/management unit involved in the operation of the Food Stamp Program, excluding Post Offices.

"*Supplemental security income (SSI)*" means monthly cash payments made under the authority of Title XVI of the Social Security Act, as amended, to the aged, blind, and disabled.

"*Thrifty food plan*" means the diet required to feed a family of four persons consisting of a man and a woman 20 through 54, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall make household-size adjustments in the thrifty food plan taking into account economies of scale.

"*Trafficking*" means the buying or selling of coupons or ATP cards for cash.

"*Underissuance*" means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

"*Underissuance error rate*" means an estimate of the proportion of allotments to which eligible households were entitled but did not receive, expressed as a percentage of all allotments issued to active sample cases.

"*Universe*" means all units for which information is desired.

"*Variance*" means the incorrect application of policy and/or a deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance.

"*Wholesale food concern*" means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

(Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2027), as amended by Pub. L. 96-249, 94 Stat. 364-365, May 26, 1980; sec. 101, Pub. L. 96-249, 94 Stat. 357 (7 U.S.C. 2012 and 2019) 91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47882, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 271.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 271.3 Delegations to FNS for administration.

(a) *Delegation.* Within the Department, FNS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FNS, the responsibilities may be carried out by the Administrator or by another official of FNS, or by State agencies with respect to claims against households, as designated.

(b) *Claims settlement.* FNS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the act or this subchapter, and to compromise or deny all or part of any claim.

(c) *Demonstration authority.* FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in Part 282.

[Amdt. 132, 43 FR 47882, Oct. 17, 1982]

§ 271.4 Delegations to State agencies for administration.

(a) *General delegation.* The State agency shall be responsible for the administration of the program within the State, including, but not limited to:

(1) Certification of applicant households;

(2) Issuance, control, and accountability of coupons;

(3) Developing and maintaining complaint procedures;

(4) Developing, conducting, and evaluating training;

(5) Conducting performance reporting reviews;

(6) Keeping records necessary to determine whether the program is being conducted in compliance with these regulations; and

(7) Submitting accurate and timely financial and program reports.

(b) *Claims delegation.* FNS delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982]

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

(a) *Coupons as obligations.* Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) *Penalties.* Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of coupons or ATP's may subject an individual, partnership, corporation, or other legal entity to prosecution under section 15(b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance. Section 15(b) and (c) of the Food Stamp Act read as follows:

> (b)(1) Subject to the provisions of paragraph (b)(2) of this section, whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons or authorization cards are of a value of $100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, shall be guilty of a misdemeanor, and,

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upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(b)(2) In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $10,000, or if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(c) *Security for coupons and ATP's.* All individuals, partnerships, corporations, or other legal entities including State agencies and their delegatees (referred to in this paragraph as "persons") having custody, care and control of coupons and ATP's shall, at all times, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP's and to avoid any unauthorized use transfer, acquisition, alteration or possession of coupons and ATP's. These persons shall safeguard coupons and ATP's from theft, embezzlement, loss, damage, or destruction.

(d) *Coupon issuers.* (1) Any coupon issuer or any officer, employee or agent, thereof convicted of failing to provide the monthly reports required in § 274.5 or convicted of violating Part 274 shall be subject to a fine of not more than $1,000, or imprisoned for not more than 1 year, or both.

(2) Any coupon issuer or any officer, employee or agent, thereof convicted of knowingly providing false information in the reports required under § 274.5 shall be subject to a fine of not more than $10,000, or imprisoned not more than 5 years, or both.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended by Amdt. 221, 47 FR 35168, Aug. 13, 1982]

§ 271.6 Complaint procedure.

(a) *State agency responsibility*—(1) *General scope.* The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or handicap; such complaints shall be handled in accordance with § 272.6. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) *Minimum requirements.* The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on

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the State agency's disposition of the complaint. The State agency shall make information on the complaint system and how to file a complaint available to participants, potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) *Complaint analysis.* The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with § 275.16 of this chapter. The information provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) *Monitoring.* FNS shall monitor State compliance with these requirements through the Performance Reporting System.

(b) *Regional office responsibility.* (1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FNS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: Mid-Atlantic Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1 Vahlsing Center, Route 526, Robbinsville, N.J. 08691.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Spring Street NW., Room 200, Atlanta, Ga. 30367.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 536 South Clark Street, Chicago, Ill. 60605.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Commerce Street, Suite 5-C-30, Dallas, Tex. 75242.

(v) For Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street, Room 400, San Francisco, Calif. 94108.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: New England Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 33 North Avenue, Burlington, Mass. 01803.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 2420 West 26th Avenue, Suite 430-D, Denver, Colo. 80211.

(2) Complainants shall be advised of the appropriate State complaint handling and fair hearing procedures. Upon household request, other complaints shall be pursued by the Department rather than the State agency, unless the complaint is one upon which the complainant wishes to request a fair hearing.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended at 45 FR 71350, Oct. 28, 1980; Amdt. 187, 45 FR 85699, Dec. 30, 1980; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 237, 47 FR 57668, Dec. 28, 1982; Amdt. 250, 48 FR 22130, May 17, 1983]

§ 271.7 Allotment reduction procedures.

(a) *General purpose.* This section sets forth the procedures to be followed if the monthly food stamp allotments determined in accordance with the provisions of § 273.10 must be reduced, suspended, or cancelled to comply with section 18 of the Food Stamp Act of 1977, as amended. The best available data pertaining to the number of people participating in the program and the amounts of benefits being issued shall be used in deciding whether such action is necessary.

(b) *Nature of reduction action.* Action to comply with section 18 of the Food Stamp Act of 1977, as amended, may be a suspension or cancellation of allotments for one or more months, a reduction in allotment levels for one or more months or a combination of these three actions. If a reduction in allotments is deemed necessary, allotments shall be reduced by reducing Thrifty Food Plan amounts for each household size by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction would be smallest for one-person households and greatest for the largest households. Since the dollar amount would be the same for all households of the same size, the rate of reduction would be lowest for zero net income households and greatest for the highest net income households. All one- and two-person households affected by a reduction action shall be guaranteed a minimum benefit of $10 unless the action is a cancellation of benefits, a suspension of benefits, or a reduction of benefits of 90 percent or more of the total amount of benefits projected to be issued in the affected month.

(c) *Reduction method.* If a reduction in allotments is deemed necessary, the Thrifty Food Plan amounts for all household sizes shall be reduced by a percentage specified by FNS. For example, if it is determined that a 25 per cent reduction in the Thrifty Food Plan amount is to be made, the reduction for all four-person households would be calculated as follows: The Thrifty Food Plan amount for a four-person household ($209 in November 1980) would be reduced by 25% to $157. Then 30 percent of the household's net food stamp income would be deducted from the reduced Thrifty Food Plan Amount. For example, 30 per cent of a net food stamp income of $200, $60, would be deducted from the reduced Thrifty Food Plan Amount ($157), resulting in a reduced allotment of $97.

(d) *Implementation of allotment reductions*—(1) *Reductions.* (i) If a decision is made to reduce monthly food stamp allotments, FNS shall notify State agencies of the date the reduction is to take effect and by what percentage Thrifty Food Plan amounts are to be reduced.

(ii) Upon receiving notification that a reduction is to be made in an upcoming month's allotments, State agencies shall act immediately to implement the reduction. Such action would differ from State to State depending on the nature of the issuance system in use. Where there are computerized issuance systems, the program used for calculating allotments shall be altered to reflect the appropriate percentage reduction in the Thrifty Food Plan for each household size and the computer program shall be adjusted to allow for a minimum benefit of $10 for one- and two-person households. The computer program shall also be adjusted to provide for the rounding of benefit levels of $1, $3 and $5 to $2, $4 and $6, respectively. FNS will provide State agencies with revised issuance tables reflecting the percentage reductions to be made in the Thrifty Food Plan amounts and reduce Thrifty Food Plan levels. In States where manual issuance is used, State agencies shall reproduce the issuance tables provided by FNS and distribute them to issuance personnel. State agencies shall ensure that the revised issuance tables are distributed to issuance agents and personnel in time to allow benefit reductions during the month ordered by FNS. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office.

(2) *Suspensions and cancellations.* (i) If a decision is made to suspend or cancel the distribution of food stamp benefits in a given month, FNS shall notify State agencies of the date the suspension or cancellation is to take effect. In the event of a suspension or cancellation of benefits, the provision for a $10 minimum benefit level for households with one or two members only shall be disregarded and all

households shall have their benefits suspended or cancelled. Upon receiving notification that an upcoming month's issuance is to be suspended or cancelled, State agencies shall take immediate action to effect the suspension or cancellation. This action would involve making necessary computer adjustments, and notifying issuance agents and personnel.

(ii) Upon being notified by FNS that a suspension of benefits is over, State agencies shall act immediately to resume issuing benefits to certified households and shall resume benefit issuance as soon as practicable.

(3) *Affected allotments.* Whenever a reduction of allotments is ordered for a particular month, reduced benefits shall be calculated for all households for the designated month. However, any household with one or two members whose reduced benefits would be less than $10 shall receive a minimum benefit of $10 except as provided in § 273.10(e)(2). Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month would not be reduced, suspended, or cancelled even though they are issued during an affected month.

(4) *Notification of eligible households.* Reductions, suspensions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions, suspensions and cancellations of allotments in accordance with the notice provisions of § 273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions, suspensions or cancellations of allotments.

(5) *Restoration of benefits.* Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not *entitled* to the restoration of the lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS shall direct State agencies to provide affected households with restored benefits unless the Secretary determines that the amount of surplus funds is too small to make this practicable. The procedures implemented by State agencies for reducing and cancelling benefits shall be designed so that in the event FNS directs the restoration of benefits, such benefits are issued promptly.

(e) *Effects of reductions, suspensions and cancellations on the certification of eligible households.* (1) Except as provided in paragraph (e)(2) of this section, determinations of the eligibility of applicant households shall not be affected by reductions, suspensions or cancellations of allotments. State agencies shall accept and process applications during a month(s) in which a reduction, suspension or cancellation is in effect in accordance with the requirements of Part 273. Determinations of eligibility shall also be made according to the provisions of Part 273. If an applicant is found to be eligible for benefits and a reduction is in effect, the amount of benefits shall be calculated by reducing the Thrifty Food Plan amount by the appropriate percentage for the applicant's household size and then deducting 30 percent of the household's net food stamp income from the reduced Thrifty Food Plan amount. If an applicant is found to be eligible for benefits while a suspension or cancellation is in effect, no benefits shall be issued to the applicant until issuance is again authorized by FNS.

(2) *Expedited service.* (i) Households eligible to receive expedited processing who apply for program benefits during months in which reductions or suspensions are in effect, shall have their cases processed in accordance with the expedited processing provisions of § 273.2(i).

(A) Those households that receive expedited service in months in which reductions are in effect and that are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the benefit delivery timeframe specified in § 273.2(i).

(B) Those households that receive expedited service in months in which suspensions are in effect and that are determined to be eligible shall have benefits issued to them within the timeframe specified in § 273.2(i). However, if the suspension is still in effect at the time issuance is to be made, the issuance shall be suspended until the suspension is ended.

(ii) Households eligible to receive expedited processing who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five calendar days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service, contained in § 273.2(i), shall be applicable to these cases.

(3) The reduction, suspension or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households. Those participating households whose certification periods expire during a month in which allotments have been reduced, suspended or cancelled shall be recertified according to the provisions of § 273.14. Households found eligible to participate during a month in which allotments have been reduced, suspended or cancelled shall have certification periods assigned in accordance with the provisions of § 273.10.

(f) *Fair hearings.* Any household that has its allotment reduced, suspended or cancelled as a result of an order issued by FNS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

(g) *Issuance services.* State agencies must have issuance services available to serve housholds receiving restored or retroactive benefits for a prior, unaffected month.

(h) *Penalties.* Notwithstanding any other provision of this subchapter, FNS may take one or more of the following actions against a State agency that fails to comply with a directive to reduce, suspend or cancel allotments in a particular month.

(1) If FNS ascertains that a State agency does not plan to comply with a directive to reduce, suspend or cancel allotments for a particular month, a warning will be issued advising the State agency that if it does not comply, FNS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s). If, after receiving such a warning, a State agency does not comply with a directive to reduce, suspend or cancel allotments, FNS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s).

(2) If FNS ascertains after warning a State agency as provided in paragraph (h)(1) of this section, that the State agency does not plan to comply with a directive to reduce, suspend or cancel allotments, a court injunction may be sought to compel compliance.

(3) If a State agency fails to reduce, suspend or cancel allotments as directed, FNS will bill the State agency for all over issuances that result. If a State agency fails to remit the billed amount to FNS within a prescribed period of time the funds will be recovered through offsets against the Federal share of the State agency's administrative costs, or any other means available under law.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 146, 46 FR 1426, Jan. 6, 1981, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 233, 47 FR 53830, Nov. 30, 1982]

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control no.
271.7 (d)	0584-0064
272.1 (d)	0584-0274
272.1 (f)	0584-0009 0584-0010 0584-0015 0584-0022 0584-0025 0584-0034 0584-0037 0584-0052 0584-0053 0584-0064 0584-0069 0584-0074 0584-0080 0584-0081 0584-0083 0584-0124 0584-0274 0584-0285 0584-0299 0584-0301 0584-0303 0584-0333 0584-0334 0584-0336 0584-0339
272.2 (a), (c), (d), (e), (f)	0584-0083
272.3 (a), (b), (c)	0584-0083
272.6 (g), (h)	0584-0025
272.7 (f), (g), (h), (i), (j), (k), (m)	0584-0064
273.1 (f), (g)	0584-0064
273.2 (b), (c), (f), (g), (h), (i), (j), (k)	0584-0064
273.4 (e)	0584-0274
273.5 (b)	0584-0064
273.6 (a), (b), (g)	0584-0064
273.7 (a), (c), (d), (f)	0584-0339
273.7 (g)	0584-0064
273.8 (b), (c), (e), (g), (h), (i)	0584-0064
273.9 (d)	0584-0064
273.10 (a), (c), (e), (f), (g)(1)	0584-0064
273.10 (g)(3)	0584-0124
273.11 (a), (b), (c), (d), (e), (f), (h)	0584-0064
273.11 (g)	0584-0334
273.11 (i) (1)-(4)	0584-0080 0584-0081
273.11 (i)(5)	0584-0009 0584-0081
273.11 (i)(6)	0584-0009 0584-0080 0584-0081
273.12 (a), (b), (c), (d), (e), (f)	0584-0064
273.13 (a)	0584-0064
273.14 (a), (b), (c)	0584-0064
273.15 (a), (c), (d), (f), (i), (k), (l), (m), (q)	0584-0064
273.16 (a), (b), (d), (e), (f), (g), (h), (i)	0584-0064
273.17 (h)	0584-0301
273.18 (a), (c), (d), (e), (f), (g), (k)	0584-0064
273.18 (h)	0584-0069
273.18 (i)	0584-0053
273.21 (a), (c), (e), (f), (g), (h), (i), (j), (m), (p), (q)	0584-0064
273.22 (b), (c), (d), (e), (f), (g)	0584-0285
274.1 (c)	0584-0009
274.1 (d)	0584-0333
274.2 (c)	0584-0069
274.2 (g)	0584-0080
274.2 (h)	0584-0080 0584-0081
274.3 (b)	0584-0009
274.3 (c) (1)-(3)	0584-0080 0584-0081
274.3 (c)(4)	0584-0015
274.3 (d)	0584-0009
274.4 (a), (b)	0584-0009
274.4 (c)	0584-0022
274.5 (a), (b), (c), (d), (e)	0584-0009
274.5 (e)	0584-0053
274.6 (b)	0584-0080
274.7 (a), (b), (c), (d)	0584-0009
274.8 (a) (1)-(2)	0584-0009
274.8 (a)(3)	0584-0015
274.8 (a)(5)	0584-0080
274.8 (a)(6)	0584-0081
274.8 (b)	0584-0009 0584-0053
274.9 (a), (b), (c), (d)	0584-0009
274.11 (b)	0584-0052
275.2 (a)	0584-0010 0584-0303
275.4 (a)	0584-0010 0584-0303
275.4 (b)	0584-0010
275.4 (c)	0584-0034 0584-0074 0584-0299
275.5 (a), (b)	0584-0010
275.6 (b)	0584-0010
275.8 (a)	0584-0010
275.9 (b), (g)	0584-0010
275.10 (a)	0584-0074 0584-0299 0584-0303
275.11 (a)	0584-0303
275.12 (b), (c), (d), (e)	0584-0074
275.12 (f), (g)	0584-0299
275.13 (b), (d), (e)	0584-0034
275.14 (c), (d)	0584-0034 0584-0074 0584-0299
275.16 (b), (c), (d)	0584-0010
275.17 (a), (b)	0584-0010
275.18 (a), (b)	0584-0010
275.19 (a), (b), (c)	0584-0010
275.20 (a)	0584-0010
275.21 (b)	0584-0034 0584-0074 0584-0299
275.21 (c), (d), (e)	0584-0034
275.22 (a), (b)	0584-0010
275.23	0584-0010 0584-0034 0584-0074 0584-0299
277.12 (a)	0584-0341
277.14 (b), (c), (d), (h), (i), (j), (k)	0584-0341
277.15 (c)	0584-0064
277.17 (a), (b), (c), (d), (e), (f), (g)	0584-0341
277.18 (a), (c), (d), (e), (g), (h)	0584-0083
278.1 (a), (b), (l)	0584-0008
278.1 (e), (f)	0584-0064
278.4 (b), (c)	0584-0085
278.5 (a)	0584-0085 0584-0314
278.5 (c), (d), (f)	0584-0008
278.6 (b)	0584-0008
278.7 (b), (c)	0584-0008

7 CFR section where requirements are described	Current OMB control no.
278.8 (a)	0584-0008
280.7 (c), (d), (g)	0584-0336
280.9 (b)	0584-0009 0584-0037
280.10 (a)	0584-0336

[50 FR 2660, Jan. 18, 1985]

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Sec.

272.1 General terms and conditions.
272.2 Plan of operation.
272.3 Operating guidelines and forms.
272.4 Program administration and personnel requirements.
272.5 Program informational activities.
272.6 Nondiscrimination compliance.
272.7 Procedures for program administration in Alaska.

EDITORIAL NOTE: OMB control numbers relating to this Part 272 are contained in § 271.8 published at 50 FR 2660, Jan. 18, 1985.

§ 272.1 General terms and conditions.

(a) *Coupons as income.* The coupon allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs.

(b) *No aid reduction.* No participating State or political subdivision shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a coupon allotment.

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to the following persons:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, or federally assisted State programs which provide assistance, on a means-tested basis, to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, State or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

(2) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(d) *Information available to the public.* (1) Federal regulations, Federal procedures embodied in FNS notices and policy memos, and State Plans of Operation (including specific planning documents such as Corrective Action Plans) shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FNS Regional and National offices. State agency handbooks shall be available for examination upon request at each local certification office within each project area as well as at the State agency headquarters and FNS Regional offices. State agencies, at their option, may require other offices within the State to maintain a copy of Federal regulations.

(2) Copies of regulations, plans of operation, State manuals, and Federal procedures may be obtained from FNS in accordance with Part 295 of this chapter.

(e) *Records and reports.* Each State agency shall keep such records and submit such reports and other information as required by FNS.

(f) *Retention of records.* Each State agency shall retain all program records in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. The State agency shall retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal Government have been liquidated. Administrative closures means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include, but are not limited to claims, documentation of lost benefits. Retention methods for ATP cards are provided in Part 274.

(g) *Implementation.* The implementation schedule for any amendment to the regulations shall be specified in the amendment.

(1) *Amendment 132.* Program changes required by Amendment 132 to the food stamp regulations shall be implemented as follows:

(i) State agencies shall eliminate the purchase requirement for all households on or before January 1, 1979. The State agency shall designate the month the purchase requirement is to be eliminated. If the month designated is other than January 1979, the State agency shall obtain prior approval of FNS. FNS shall approve the designation of months prior to January 1979, if the State agency demonstrates that an accounting procedure for the new issuance system will be in place. The submission dates for the forms FNS-250 and FNS-256, stipulated in § 274.8(a), shall be effective with the reports for the first month of issuance without a purchase requirement. For example, if EPR is implemented in January, the FNS-250 and FNS-256 for January would be due by March 17, 1979. The FNS-259 shall be submitted in accordance with § 274.8(a)(3) starting with the quarter beginning January 1979.

(ii) State agencies may implement all eligibility rules contained in Part 273 and all issuance rules contained in Part 274 at the same time the purchase requirement is eliminated, but in no case shall eligibility and issuance rules be implemented prior to elimination of the purchase requirement. State agencies may also implement portions of Part 273 and Part 274 separately after the purchase requirement is eliminated, provided that the eligibility rules setting the income standards, the income deductions and the household allotment calculation are implemented at the same time, and all rules are implemented no later than 3 months after the purchase requirement is eliminated. However, if a State agency implements EPR after December 1, 1978, it shall implement the certification and other issuance regulations for all new applications and recertifications no later than March 1, 1979.

(iii) State agencies shall have up to 4 months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during this time will be converted to the new program at recertification. Remaining households shall be converted by a desk review during that 4-month period. The new income definition, deductions, and allotment calculation shall be completed for all households which are converted through a desk review. To the extent that the case file and other information available to the State agency permit, other eligibility criteria, such as work registration, resources, tax dependency, and alien status, shall be considered during the desk review. Otherwise, nonincome eligibility factors shall be deferred until the household's scheduled recertification. In no event shall a household's certification period be extended as a result of the desk review. Until recertified or converted by a desk review, a household shall continue to receive the bonus portion of the allotment, calculated in accordance with the income, deduction, and basis of issuance provisons of the Food Stamp Act of 1964. During the case file conversion period, some households may be participating on the basis of the old program rules and some on the new rules. Claims against households and restoration of benefits shall not be assessed provided that whichever program rules are in use for a particular case are correctly applied during the conversion period. However, errors caused by miscalculations based on the old or new program rules which result in an entitlement to restoration of lost benefits or an overissuance shall be assessed in accordance with §§ 273.17 and 273.18 of these regulations. The procedures for calculating lost benefits or overissuances as specified in §§ 273.17 and 273.18 shall be applied to any case found to be in error after the implementation of these procedures, even though the action which caused the error may have occurred prior to the date of implementation. Notwithstanding anything to the contrary in the preceding provisions of this paragraph, State agencies shall have up to four months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during this time shall be converted to the new Program at recertification. However, if the State agency elects to schedule a desk review for these households earlier in the four-month period, conversion shall take place after the desk review. Further, State agencies may elect to do a point-in-time computer conversion in lieu of individual desk reviews. Such a computer conversion must cover entire categories of households, such as public assistance households, all households in a particular project area, all households currently in the computer files, etc., and the State agency may not elect to postpone the conversion of certain cases until recertification.

(iv) State agencies shall implement § 273.17 on the restoration of lost benefits on or before March 1, 1979. State agencies are encouraged to implement restoration of lost benefits concurrent with the elimination of the purchase requirement, especially as they relate to households which are entitled to lost benefits but which have been unable to receive them because the households are currently ineligible. State agencies shall notify currently ineligible households of the availability of their lost benefits by using one of the following procedures:

(A) State agencies which can readily identify the ineligible households which are entitled to lost benefits shall notify these households and restore the lost benefits within 4 months of the date restoration of lost benefits is implemented.

(B) Other State agencies shall issue a one-time-only press release notifying ineligible households that benefits can be restored. The press release shall advise households to contact the local food stamp office for more information. In addition, State agencies issuing the press release shall request the assistance of local Community Action Programs, general assistance agencies, legal services programs funded by the Legal Services Corporation, State employment service and unemployment compensation offices and other State and Federal governmental agencies providing services to low-income households, such as the Social Security Administration or the Community Services Administration. FNS shall provide the State agency with copies of the letter to be used to request assistance from outreach organizations and governmental agencies, and the fliers and posters which will be distributed upon request to such organizations and agencies. The language of the request for assistance, the notice to households and the poster is contained in the appendix to this rulemaking. State agencies shall mail the request for assistance and display posters in all local agency food stamp certification and issuance offices and welfare offices within 30 days of receipt from FNS. In project areas subject to the bilingual requirements of § 272.4(c), State agencies shall provide translations of the posters and fliers. Upon request, FNS shall provide Spanish posters and fliers. FNS shall reimburse State agencies for all costs of providing translations of the posters and fliers in languages other than Spanish. The State agency shall display the posters in its offices for six months. Households whose entitlement to benefits has been clearly established may apply for restoration of lost benefits under this paragraph for an indefinite period. Households whose entitlement to restoration of lost benefits was established more than three years prior to application for retroactive benefits under this paragraph shall be permitted to document entitlement if entitlement cannot be verified from State agency records. Such households shall sign an affidavit under penalty of perjury explaining their entitlement. In lieu of the requirements of this paragraph, State agencies may elect to provide notice pursuant to paragraph (g)(1)(iv)(A) of this section, in any or all project areas within the State.

(v) State agencies shall assume the authority to settle or adjust recipient claims delegated under § 271.4(b) on or before July 1, 1979.

(vi) State agencies without a currently approved utility standard required in § 273.9(d)(5) shall develop and implement an FNS approved utility standard on or before October 1, 1979. The State agency shall notify households certified at the time the utility standard is implemented of the availability of the standard and the conditions for its use in lieu of actual expenses. Households qualified to use the standard and which elect to do so shall have the standard applied as any other change in circumstances. Otherwise, actual utility expenses shall continue to be used for households qualified for the standard until their next recertification.

(vii) State agencies shall advise FNS of their determination of the need for bilingual services as required by § 272.4(c) on or before December 1, 1978. If the State agency cannot determine, based on available information sources, whether or not bilingual services are required in particular project areas, it shall so advise FNS on or before December 1, 1978. The State agency shall then develop procedures to record the number of non-English-speaking low-income households which make contact with its offices in these project areas as required by § 272.4(c)(6). These procedures shall be implemented on or before March 1, 1979, and shall continue for 6 months. The State agency shall submit to FNS its determination(s) of the need for bilingual services not later than 60 days following the end of the 6-month period. Bilingual outreach materials shall be available for distribution within 90 days of the State agency's determination that such materials are required. When the State agency determines that bilingual staff and certification materials are required, it shall also make a determination of whether volunteers or paid staff will be used. When volunteers are to be used, the State agency shall provide the materials and arrange for volunteers within 90 days. Paid staff and materials shall be provided within 180 days.

(viii) Prior to the certification of households under these regulations, State agencies shall implement staff training for the transition as required in § 272.4(e)(3), and training for outreach workers, receptionists, and others, as required in § 272.4(e)(1) (v) and (vi). Beginning with these training sessions for the transition, State agencies shall implement the requirements for public participation at training sessions, as specified in § 272.4(e)(1)(iv). State agencies shall designate a training coordinator and develop and implement the ongoing training program required by § 272.4(e) on or before July 1, 1979.

(ix) Elimination of the purchase requirement and the implementation of the basic financial and nonfinancial eligibility criteria and other coupon issuance criteria shall not be extended for any reason. FNS may grant extensions for other provisions contained in these rules, provided that the State agency presents compelling justification for a delay and establishes an acceptable alternative schedule in advance of the implementation deadline. In no event will FNS grant an extension in excess of 120 days from the specified implementation date. In those cases where extensions are granted, the relevant Department regulations under the Food Stamp Act of 1964 shall remain in effect until superseded by implementation of the new rules.

(2) *Amendment 137.* Program changes required by Amendment 137 to the food stamp regulations shall be implemented for all households initially applying for food stamp benefits no later than 90 days following the publication of this amendment.

(3) *Amendment 146.* The procedures contained in Amendment 146 shall be

implemented by State agencies in time to be able to issue reduced food stamp allotments or to suspend or cancel allotments within 60 days after the date of publication of this amendment in the FEDERAL REGISTER.

(4) *Amendment 141.* State agencies shall begin planning for and conducting ongoing consultations with the Indian tribal organizations of the reservations within their jurisdiction as soon as possible after the effective date of this amendment. Portions of the State Plan of Operation to be submitted for fiscal year 1980 shall be subject to ITO comment as required by § 281.2(a). The funding authority in § 281.9 shall apply to budgets beginning with the fourth quarter of fiscal year 1979.

(5) *Amendment 211.* State agencies shall implement the new Social Security Number (SSN) provisions for new applicants no later than February 1, 1983 and convert the current caseload at recertification or when the case is otherwise reviewed, whichever occurs first. The citizenship provisions must be implemented on or before April 1, 1983. All other provisions shall be implemented at State agency discretion.

(6) *Amendment 149.* Changes to States' Quality Control systems as required by this amendment shall be implemented as follows:

(i) *All* State agencies shall continue conducting modified QC reviews [in accordance with regulations published February 9, 1979 (43 FR 8548)] through August 31, 1979 and submit Form FNS-133 to FNS by September 15.

(ii) State agencies shall implement the requirements in Subpart C of Part 275 for conducting QC reviews no later than October 1, 1979. A quality control sampling plan (as specified in § 275.11(a) of these regulations) must be submitted by each State to the appropriate FNS Regional Office no later than September 1, 1979 (30 days prior to implementation). This will allow time necessary for approval of the plans prior to the October 1 implementation date.

(iii) State agencies are encouraged to implement QC September 1, if possible. States opting to implement early would not be required to operate *for this month* under an approved sampling plan. These States must, however, submit sampling plans in accordance with paragraph (g)(6)(ii) of this section. The month of September (sampling month) would serve as a test phase. Therefore, data collected for the sample month would not be required to be submitted to FNS or used in determining a State's cumulative allotment error rate.

(iv) Regulations published October 17, 1978 (43 FR 47846) which implement major aspects of the Food Stamp Act of 1977 provide for the conversion of cases via a desk review (§ 272.1(g)(1)(iii)). Desk converted cases would be converted to the new eligibility criteria for income and deductions but may not have been converted to the new criteria for resources, work registration, tax dependency, etc. Therefore, States will have households participating in the program based on some of the eligibility criteria of the 1964 Food Stamp Act. Desk converted cases as provided in § 272.1(g)(1)(iii) and cases which should have been converted via desk review (some cases may not undergo the conversion process as required), shall be subject to standard QC review procedures. When the QC reviewer detects a variance in one of these cases which results from an element of eligibility which was not converted and was not required to have been converted, the reviewer shall disregard the variance. When the reviewer detects a variance in a case when an element of eligibility was, or should have been converted, the reviewer shall handle the variance like any other QC variance as identified in § 275.12 of these regulations. It is possible that desk converted cases may continue to show up in QC samples through February 1980.

(v) State agencies shall submit reports of QC review activity (one copy to the appropriate FNS Regional Office and one copy to the Deputy Administrator for Family Nutrition Programs, Washington, D.C.) as follows:

(A) Each State agency shall report the monthly progress of sample selection and completion on a form provided by FNS. This report shall be submitted to FNS so that it is received no later than 10 days after the end of each month, beginning December 10, 1979. Each report shall reflect sampling and review activity for the previous month.

(B) Each State agency shall report the results of QC review activity on a form provided by FNS. This report shall be submitted to FNS so that it is received no later than 90 days from the end of the reporting period.

(C) Corrections to information on the above reports requested by FNS must be submitted within 10 days of the request.

(7) *Amendment.* (i) State agencies shall implement the program changes required by amendment for all new applications and recertifications no later than January 1, 1980. Currently eligible households shall be converted at recertification or when they request conversion to the new deduction system by responding to the notice required in paragraph (g)(7)(iii) of this section or by otherwise requesting recomputation.

(ii) State agencies may but are not required to convert the current caseload to the shelter deduction system provided for in § 273.9(d)(5) through desk reviews or by computer search. State agencies are encouraged to convert eligible households to the new shelter deduction as soon as possible to allow these households to benefit during the winter months.

(iii) Notices explaining the changes and their applicability shall be available at all food stamp certification offices and shall also be mailed or otherwise provided individually to all currently certified households at least once prior to implementation. At a minimum, these notices shall be distributed in the month prior to implementation either with the ATP card or separately but no later than the 15th of the month. The notice shall advise the household of the availability of the new deductions and the procedures for reporting medical and shelter expenses. If the State agency can identify those households to which this amendment would apply, only these households need to receive the notice.

(iv) Fliers advising of the changes contained in this amendment shall be made available to public and general assistance offices, local Social Security offices, and any interested organizations, particularly those dealing with the elderly or disabled or those places where the elderly or disabled congregate, such as housing units. Also, posters explaining the changes shall be displayed in food stamp certification offices and shall be made available to public and general assistance offices, local Social Security offices and any other interested groups. State agencies shall notify all organizations on its outreach contact list of the changes and of the availability of posters and fliers. State agencies shall issue press releases to the news media advising of the impending program changes.

(v) For the first two months of implementation, State agencies shall have up to 30 days to process changes in medical and shelter costs reported in conjunction with this amendment. The change shall be effective for the first issuance following that 30-day period with restoration of lost benefits to the point at which the change would normally become effective under § 273.12. The State agency may request an extension of processing time of up to 60 days to act on these changes. The State agency shall submit appropriate documentation to FNS for the State or any part of the State for which such an extension is requested. After the first two months the State agency shall act on these changes in accordance with the normal processing standards in § 273.12(c). For changes reported during a period of two months following a State agency's implementation of this amendment, verification of shelter and medical expenses required by § 273.2(f) must be obtained prior to the issuance of the third normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original level. State agencies are encouraged to complete such verification and, if needed, conduct an interview prior to processing the change. After this initial period, State agencies will verify these expenses in accordance with the normal timeliness standards.

(vi) Medical expenses shall be subject to the same rounding procedures used for shelter expenses in § 273.10(e)(1)(ii). This procedure shall be in effect until implementation of amendments to § 273.10(e)(1)(ii).

(vii) No household shall be entitled to restoration of lost benefits under this amendment for any period prior to the time the State agency has implemented its provisions. For the initial months after implementation, during which the longer processing time allowed under this amendment is in effect, a household shall be entitled to restoration of lost benefits back to the month the change would have become effective under the normal processing standards in § 273.12(c). After this initial period, no household shall be entitled to restoration of lost benefits unless the State agency does not act on reported changes in accordance with the timeliness standards in § 273.12(c) or the household is otherwise entitled under the provisions of § 273.17.

(viii) Implementation of these program changes falls in the last three months of the October 1979 to March 1980 reporting period for quality control. For the months of January, February and March 1980, all cases in which a household member is either 60 years of age or over, receives SSI, or disability benefits under Title II of the Social Security Act will be subject to standard quality control review procedures, except that any varying information regarding medical deductions and/or shelter deductions in excess of the cap found in the review shall be disregarded in determining errors. Such information shall be noted on the Face Sheet of Form FNS-245 under Part VII, Discrepancies and Other Information and reported to the State agency for appropriate action on an individual case basis. Starting with the April-September 1980 reporting period, when the reviewer detects a variance in the medical deduction and/or the shelter deduction in excess of the cap, and these expenses were reported at application, recertification or during the certification period, the reviewer shall handle the variance like any other QC variance as identified in § 275.12 of the Performance Reporting System regulations.

(8) *Amendment 152.* The rounding procedure set forth in § 273.10(e) shall be in effect for new applications and recertifications no later than July 1, 1980. The State agency shall have up to 12 months following the implementation date of final regulations to convert the current caseload to the rounding procedure that is chosen under § 273.10(e)(1)(ii). The State agency shall have a choice of the following three options in converting households that are already participating at the time the new rounding procedure goes into effect:

(i) Convert households at recertification; (ii) convert households by conducting a desk review; or (iii) convert all households, or all households in a certain category, at a point-in-time. For example, the State agency may convert all public assistance households or all households in a project area by computer. Point-in-time mass conversions shall be conducted no later than July 1, 1980. In any case, the State agency shall advise FNS regarding which rounding and caseload conversion procedures are chosen and when the conversion will be completed.

(9) *Amendment 154.* State agencies shall implement the program changes required by Amendment 154 as follows:

(i) State agencies shall begin requiring social security numbers for all new applications and recertifications no later than the first day of the first month which commences 120 days from the date of publication of final rules. Participating households shall be requested to provide or apply for social security numbers (SSN) for appropriate household members at recertification, or at the time of office contact for any other reason. The State agency shall provide advance notification of this requirement and the consequences of noncompliance by sending an individual notice to all participating households and by providing press releases for dissemination through the media. The individual notices may be sent as either a one-time notice prior to implementation and/or with the notices of expiration of a certification period.

(ii) If any affected member(s) of a household does not have his or her SSN readily available at the time of application, recertification, or any office contact, he or she shall follow the procedures for furnishing an SSN in accordance with § 273.6 as amended.

(iii) State agencies shall implement the fraud claims procedures contained in § 273.16 and § 273.18. Implementation shall be no later than the first of the month following the 120th day from the date of publication of final rules. By implementation the State agency shall also have an approved system for handling claims, including a method for accounting for the fifty percent retention of the value of funds collected from fraud claims. Any collection action on fraud claims after implementation is subject to the fifty percent retention including claims established under the Food Stamp Act of 1964 as amended and under the Food Stamp Act of 1977, as amended. However, only individuals found guilty of fraud through an administrative fraud hearing or through a court of law under regulations promulgating the Food Stamp Act of 1977, as amended, are subject to the recovery provisions in §§ 273.16 and 273.18 retroactive to implementation of fraud claim provisions under the 1977 Act.

(10) *Amendment 207.* State agencies shall implement the changes in the rules required by Amendment 207 no later than January 1, 1983. Disabled parents who requested and were denied seperate household status on or after September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status.

(11) *Amendment 160.* State agencies shall implement the provisions of this amendment as follows:

(i) State agencies shall submit the initial State corrective action plans so they are received by FNS within 90 days of publication of these regulations as required in § 275.22(a) of this chapter. This initial plan shall contain all known deficiencies in the State which meet the criteria set forth in § 275.16(b) of this chapter and shall identify, for each such deficiency, the items required in § 275.17(b) of this chapter. Project areas also shall prepare and submit to the State corrective action plans for all identified deficiencies. These plans shall be submitted within 60 days of identification of a deficiency and shall include any deficiencies known to the project area prior to publication of these regulations for which corrective action has not been completed. Ninety days after publication of these regulations, all provisions of §§ 275.15, 275.16, 275.17, 275.18, 275.19 and 275.22 of this chapter shall be implemented.

(ii) State agencies shall have submitted management evaluation (ME) review schedules within 90 days of publication of these regulations as required by § 275.20 of this chapter. These review schedules shall contain all information required by § 275.20 of this chapter and shall be adhered to unless a change is necessary. If a modification to an ME review schedule is necessary at any time in the review period, the State shall notify the appropriate FNS Regional Office of the modification.

(iii) State agencies shall implement ME reviews within 90 days of publication of these regulations, following the provisions of §§ 275.5, 275.6, 275.7, 275.8, and 275.9 of this chapter. Any waiver from the requirements of § 275.7 or § 275.9 must be requested 60 days prior to its implementation as identified in § 275.5(c). Development or submission of requests for a deviation shall not delay implementation of the ME review sub-system past the required implementation date.

(iv) All provisions of these regulations which are not addressed in paragraphs (g)(11) (i) and (ii) of this section shall be implemented within 90 days of publication of these regulations. While this includes the requirements for a Performance Reporting System Coordinator and designation of an organizational entity for effecting corrective action as identified in § 275.2(a) of this chapter, this position and designation may be established on an interim basis; provided that the provisions of § 275.2(a) of this chapter are fully implemented by October 1, 1980. During this interim period States shall ensure that all responsibilities of the coordinator or entity are adhered to.

(12) [Reserved]

(13) *Amendment 162.* Program changes required by Amendment 162 of the Food Stamp Program regulations shall be implemented as follows:

(i) The fee agent system for conducting interviews is currently in use and its continuing use is approved.

(ii) All other rules except paragraph (p) of § 272.8 shall be implemented as soon as practical but no later than 90 days following the date of final rulemaking. A fee agent training plan must be submitted within 45 days of the date of final rulemaking. Paragraph (p) of § 272.8 concerning points and hours shall be implemented following the time standards contained therein.

(14) *Amendment 142.* (i) State agencies shall restore lost benefits to households who had their eligibility or benefit levels adversely affected because Federal energy assistance payments were counted as income and/or resources. Entitlement to restoration of lost benefits shall be retroactive to October 1, 1979 for payments received under CSA's ECAP; to November 27, 1979 for payments received under DHEW's EAP; and to January 7, 1980 for the one-time-only energy assistance payments to SSI households in accordance with Pub. L. 96-126.

(ii) State agencies shall use the following procedures for notifying households of entitlement to restoration of benefits under Amendment 142:

(A) State agencies which can readily identify those SSI households who received the one-time payment and those households who received payments under the Energy Crisis Assistance or Energy Allowance Programs which lost benefits because their energy assistance payment was counted as income and/or resources must notify such households of entitlement to restoration of lost benefits.

(B) State agencies which cannot readily identify households entitled to restoration of lost benefits due to the circumstances described in § 272.1(g)(14)(i) must issue a one-time-only press release to notify households which have participated since October 1, 1979 of possible entitlement to restoration of lost benefits. State agencies may, at their option, use additional means of notification such as posters.

(15) *Amendment 163.* State agencies shall implement the provisions in this amendment no later than July 1, 1980.

(16) *Amendment 174.* State agencies shall implement the program changes required by Amendment *174* as follows:

(i) State agencies shall implement the income/resource disregard provision for Federal, State, and local energy assistance payments (§§ 273.8 and 273.9 of this subchapter) no later than October 1, 1981.

(ii) State agencies shall implement the new maximum resource limit and the exemption of vehicles for the physically disabled (§ 273.12 of this subchapter) no later than October 1, 1981 for all new applicants. State agencies shall convert the current caseload to the new resource limit at the time of recertification, or at any other time the casefile is reviewed prior to recertification.

(iii) State agencies shall implement the student participation provisions of this amendment (§§ 273.1, 273.2, 273.5, 273.7 and 273.11 of this subchapter) no later than October 1, 1981 for all new applicants. Current caseload shall be converted at the time of recertification or any time the casefile is reviewed prior to recertification.

(17) *Amendment 158.* (i) The procedures contained in Part 273 regarding SSI food stamp joint application processing shall become effective on August 1, 1980 for all State agencies except that:

(A) In those areas designated as SSI/Elderly Cash-out Demonstration Project Sites or Demonstration Project Comparison Sites, implementation of these provisions will be delayed. In addition, Social Security office service areas which contain either demonstration projects sites or demonstration comparison sites will be temporarily exempted, in their entirety, from implementation of these provisions whether or not their boundaries are co-terminous with demonstration project sites and/or demonstration comparison site boundaries. This temporary exemption removes the administrative problem of the same SSA office simultaneously operating under both joint processing and cash-out regulations. The procedures contained in this rulemaking shall become effective for these project areas on the first day of the month following the ninetieth day after the termination of the demonstration project.

(B) State agencies in SSI cash-out States as defined in § 273.20 shall not implement the provisions of this rulemaking. In the event an SSI cash-out State loses that status, the State agency shall implement the provisions of this rulemaking on the first day of the month following the ninetieth day after the Secretary of Health, Education, and Welfare determines that the State no longer qualifies for cash-out status.

(ii) State agencies shall distribute fliers advising of the changes contained in this amendment to public and general assistance offices, local Social Security offices, any interested organizations, particularly those dealing with the elderly or disabled, and those places where the elderly or disabled congregate, such as housing units senior citizens centers, and elderly feeding programs. Also, posters explaining the changes shall be displayed in food stamp certification offices and shall be made available to public and general assistance offices, local Social Security offices and any other interested groups. State agencies shall notify all organizations on their outreach contact lists of the changes and of the availability of posters and fliers. State agencies shall issue press releases to the news media advising of the impending program changes. FNS will supply State agencies with model language describing the changes which State agencies may use in their publications.

(18) *Amendment 168.* The provisions of Amendment 168 shall be effective on the thirtieth day following their publication. Any claims filed against State agencies for incidents that occur after the publication of this amendment shall be filed in accordance with the provisions of this amendment. Any claims filed against State agencies for incidents that occurred prior to the publication of this amendment shall be filed in accordance with the rules in effect at the time they occurred. However, the administrative review procedures contained in this amendment shall be applicable to all claims that are filed after the effective date of this amendment.

(19)–(20) [Reserved]

(21) *Amendment 178.* State agencies shall implement the provisions of § 273.8 and § 273.9 of this amendment for all new applicants no later than February 1, 1981. States shall convert the current caseload to the new rules at recertification or at the time the case is otherwise reviewed, whichever comes first.

(22) *Amendment 179.* State agencies shall implement those verification procedures mandated in § 273.2 and § 273.8 no later than the first of the month 120 days following publication of final regulations. State agencies may implement those provisions allowed at State agency option in § 273.2 and § 273.12, once the options have been approved by FNS and the State certification manuals have been revised to incorporate the options.

(23) *Amendment 171.* (i) All States operating an ATP issuance system shall submit the first Form FNS-46, Food Stamp Reconciliation Report, in accordance with Amendment No. 171, for the month of February 1981. This report shall be submitted to the FNS Regional Office within 90 days from the end of the report month.

(ii) All States shall submit the Form FNS-388, State Coupon Issuance and Particpation Estimates, for February 1981 and each month thereafter. Those States that have not submitted procedures for estimating program participation, shall submit them to the FNS Regional Office on or before February 9, 1981.

(24) *Amendment 186.* The procedures of Part 275 regarding SSA/food stamp joint processing and demonstration cases shall become effective on August 1, 1980 for all applicable State agencies. These procedures must be implemented by October 1, 1980.

(25) *Amendment 187.* State agencies shall implement the complaint procedures required by § 271.6(a) no later than 180 days following publication of final regulations.

(26) *Amendment 165.* State welfare agencies and State employment agencies shall implement the provisions of Amendment 165 no later than the first of the month following 120 days from publication of amendment 165 in the FEDERAL REGISTER as follows:

(i) Both agencies shall begin immediately to develop the work registration plan and agreements discussed in § 273.7(c) and (d) of Amendment 165. The plan and agreements must be approved and implemented within the 120 day timeframe established for implementation of all provisions of the final rule.

(ii) The provisions of amendment 165 shall be applied to households at the time of initial application, recertification, or reregistration, beginning no later than the first of the month following 120 days from publication of the amendment.

(27) *Amendment 189.* State agencies shall implement the provisions of Amendment No. 189 no later than July 1, 1982.

(28) *Amendment 156.* State agencies shall implement the program changes required by Amendment 156 within 120 days after publication of these regulations, meeting the submittal deadlines outlined in § 272.2 and § 272.3.

(29) *Amendment 190.* State agencies shall implement these regulations no later than January 1, 1982. The rules are effective November 9, 1981.

(30) *Amendment 191.* Areas subject to the photo ID card requirement must have issued photo ID cards (or cards annotated to indicate that the card is valid without a photograph, in accordance with § 273.10(g)(4)(ii)(C)) to all participating households, and shall require presentation of photo ID cards (or the annotated cards) at issuance points as a precondition of issuing coupons to households, no later than the first of the month that is 12 months after the publication of final regulations. Any areas that become subject to the photo ID card requirement at a later date shall also come into full compliance no later than the first of the month that occurs 12 months after FNS notifies the State agency that the area is subject to the requirement.

(31) *Amendment 169.* The provisions of Amendment 169 shall be effective March 30, 1981. These provisions shall apply to the period beginning October 1, 1980, except that the provisions of § 277.4(b)(2) shall apply to the period October 1, 1978 through October 1, 1980. No State shall be subject to sanctions based upon quality control error rates for any period prior to October 1, 1980. No State shall receive enhanced funding based upon quality control data for a period prior to the date upon which its quality control system was in operation.

(32)—(33) [Reserved]

(34) *Amendment 198.* State agencies opting to match earnings data provided by applicants and participants with information maintained by the Social Security Administration shall first execute data exchange agreements with the Social Security Administration. After the effective date of this rule and after execution of this agreement, State agencies may implement wage match provisions at their discretion.

(35) *Amendment 202.* State agencies shall implement the provisions of Amendment No. 202 as follows:

(i) The rules shall be implemented no later than October 1, 1981, including the provisions for a medical deduction, separate dependent care deduction, and uncapped shelter expense deduction for the elderly and disabled in Puerto Rico, Guam, and the Virgin Islands. All households who apply October 1 or later and those households who are recertified October 1, 1981 or later shall be processed in accordance with these provisions. The proration of initial month benefits shall begin no later than October 1, 1981.

(ii) Conversion of the current caseload to the new gross income test and earned income deduction amount shall be completed no later than 90 days from October 1, 1981, or 90 days from the date of implementation approved through waiver requests in accordance with paragraph (g)(35)(vi) of this section.

(iii) Conversion of the current caseload to the new household definition; ineligibility of strikers and boarders; and, in Puerto Rico, Guam, and the Virgin Islands, a medical deduction, separate dependent care deduction, and uncapped excess shelter expense deduction shall be completed at or before recertification. In no event shall the new medical, dependent care, and excess shelter provisions for Guam, Puerto Rico and the Virgin Islands be implemented prior to October 1, 1981.

(iv) Notification to affected households of these changes shall be done, at a minimum, in the same manner required for mass changes in public assistance grants prescribed in § 273.12(e)(2)(ii).

(v) Beginning October 1,1981, outreach activities engaged in by State agencies shall be ineligible for Federal matching funds.

(vi) FNS will consider requests for waivers to these timeframes, except for the timeframe in paragraph (g)(35)(v) of this section, on a state-by-state basis, if good cause can be established and justified, in writing, for the need for a longer timeframe.

(36) *Amendment 259.* State agencies may implement this Monthly Reporting and Retrospective Budgeting rule at any time, but shall implement this rule no later than January 1, 1984. Prior to January 1, 1984, this rule may be implemented State-wide, in only part of a State (such as in certain project areas), or for only certain reasonable classifications of households (such as for only households receiving Aid to Families with Dependent Children) so long as the implementation is completed by January 1, 1984. State agencies shall have begun to send monthly reports to households so that they can report their January 1984 circumstances in accordance with § 273.21(h). However, the changes in the interim provisions made by this final rule need not be implemented on January 1, 1984. The changes made by this final rule shall be implemented no later than May 1, 1984. Unless otherwise specified in § 273.21 of this chapter, all other food stamp regulations shall apply to State agencies and to applying or participating households.

(37) *Amendment 205.* The procedures extending eligibility to otherwise eligible residents of shelters for battered women and children contained in Amendment 205 shall be implemented by State agencies no later than April 1, 1982.

(38)—(39) [Reserved]

(40) *Amendment 213.* All State agencies shall execute the appropriate data exchange agreements and implement the provisions of this amendment not later than January 1, 1983. State agencies may opt to match earnings data with information maintained by the Social Security Administration upon publication of final regulations provided they have executed data exchange agreements with the Social Security Administration. State agencies which are not prohibited by State law from wage matching with agencies administering unemployment compensation may do so upon publication of final regulations, provided they have executed the appropriate data exchange agreements.

(41) State agencies shall implement the provisions of Amendment 215 upon publication.

(42) *Amendment 217.* The regulations concerning the optional workfare program contained in Amendment 217 shall be in effect November 8, 1982. Workfare programs may be implemented after this date provided FNS has approved the workfare plan.

(43) *Amendment 220.* State agencies shall implement Amendment 220 on October 1, 1982.

(44) *Amendment 221.* State agencies shall implement on a case by case basis the provisions of this rule, excluding the provision which revises the application form, beginning the first of the month 30 days from the date of publication. The provision requiring a notice of verification on the application form shall be implemented on or before the first day of the month beginning at least 90 days from the date of publication. If the State agency has not depleted its existing supply of application forms, the State agency may opt to implement this provision by providing an insert to the application form containing the notice of verification.

(45) *Amendment 222.* This amendment shall be implemented by the first day of the month following the 30th day after publication. As of that date prior approval of forms, manuals, instructions, or any other type of op-

erating guidelines will no longer be required and waivers will be granted or denied based on the new criteria contained herein. Additionally, as of that date State agencies shall inform FNS of changes, as they occur, in their organizational outline and agreements with other agencies. The submission requirement for the Budget Projection Statement, Form FNS-366A, as set forth in § 272.2(e) shall become effective on August 15, 1983, for the 1984 Federal fiscal year beginning October 1, 1983 through September 30, 1984.

(46) *Amendment 225.* The State agency shall obtain FNS approval for the exclusion of energy assistance provided under any State or local program, in accordance with the criteria set forth in §§ 273.8(e)(14) and 273.9(c)(11), within six months of the date of publication of the final rule. State or local energy assistance which is not approved during this six month period shall cease to be excluded at the end of the period. The new provisions concerning restoration of lost benefits in § 273.17 (a) and (e) shall be implemented no later than 120 days following publication of the final rule.

(47) *Amendment 227.* (i) In accordance with § 276.2(b)(3) (iii), FNS will hold State agencies strictly liable for losses by issuance agents where reconciliation shows noncompliance with photographic identification (photo ID) card requirements beginning with the fiscal quarter that begins January 1, 1983.

(ii) State agencies shall include provisions establishing the liability to the State agency of an issuing agent for the issuance losses covered in § 274.1(b)(6) in the next contract or agreement between the State agency and the issuing agent that is entered into or renewed after publication of this rule. Not later than one year following such publication, all contracts or agreements shall contain the required provision establishing the liability. However, failure of State agencies to include this language in contracts will not absolve the State agencies of the liability referred to in paragraph (g)(47)(i) of this section.

(48) *Amendment 228.* FNS will consider requests for waivers to monthly reporting requirements beginning November 5, 1982.

(49) *Amendment 245.* The mail issuance loss rates of 0.75 percent and $2,250 are effective January 1, 1983. The mail issuance loss rate of 0.5 percent and $1,500 are effective October 1, 1983. For the second quarter of fiscal year 1983 only, FNS will look at Statewide loss rates and the loss rates of individual reporting units within the State. Where the loss rate for individual reporting units within the State is over the tolerance in that quarter and the Statewide loss rate is also over tolerance, FNS will assess liability for losses exceeding the tolerance reported for the second quarter of 1983. Where the loss rate for individual reporting units within a State are over tolerance for the second quarter, but the Statewide loss rate is under tolerance, State agencies shall have one additional quarter (the third Fiscal Year 1983 quarter) to bring such individual reporting units' loss rates into compliance with the tolerance levels. Thus for these reporting units, FNS will assess liability beginning with the fourth quarter of fiscal year 1983 and each quarter thereafter for losses which exceed the tolerance levels, regardless of Statewide loss rate. FNS will bill State agencies for losses on a semiannual basis.

(50) *Amendment 230.* State agencies shall implement the provisions of Amendment 230 no later than January 1, 1983.

(51)—(52) [Reserved]

(53) *Amendment 233.* State agencies shall implement these regulations no later than February 1, 1983.

(54) *Amendment 234.* The provisions of Amendment 234 shall apply to those sponsored aliens on behalf of whom the sponsor signed an affidavit of support or similar statement (as a condition of the alien's entry into the United States as a lawful permanent resident) on or after February 1, 1983.

(55) *Amendment 235.* Except for the provisions which simply extend options to State agencies, State agencies shall implement the changes made by Amendment 235 no later than February 1, 1983. Elderly/disabled persons who requested and were denied separate household status or other consid-

erations granted disabled persons on or after September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status or other special considerations.

(56) [Reserved]

(57) *Amendment 240.* The provisions of Amendment 240 shall be effective on January 11, 1983. The enhanced funding, which the amendment implements, is available to political subdivisions retroactive to October 1, 1982. The enhanced funding is available to a political subdivision for a workfare participant who begins working on or after October 1, 1982.

(58) *Amendment 242.* State agencies shall implement the disqualification penalties for intentional Program violation, and the improved recovery of overpayments provisions contained in Amendment 242 no later than April 1, 1983.

(i) The provision in § 273.11(c) for handling the income and resources of an individual disqualified for intentional Program violation shall apply to any individual disqualified for such a violation since the implementation of the fraud disqualification provisions of the Food Stamp Act of 1977. The disqualification procedures for intentional Program violation in § 273.16 shall apply to any individual alleged to have committed one or more acts of intentional Program violation since the implementation of the fraud disqualification provisions under the Food Stamp Act of 1977. However, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occur after implementation of this amendment. In addition, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occurred either during a certification period based on an application form containing these penalties or after receipt of written notification from the State agency of these penalties. Recurring acts of intentional Program violation which occur over a period of time prior to and after implementation of this final rule shall not be separated. Only one penalty can be imposed for such recurring violations and the household member shall be disqualified in accordance with the disqualification penalties specified in this amendment. The reporting requirements of § 273.16(i) shall become effective upon implementation, however, the State agency shall have until October 1, 1983, to submit such reports on individuals disqualified under previous regulations implementing the Food Stamp Act of 1977.

(ii) The recovery provisions for claims against households in § 273.18 shall apply to any overissuance caused by an action which occurred after implementation of regulations promulgating the Food Stamp Act of 1977, as amended. And, the procedures for calculating the amount of overissuances as specified in § 273.18(c) shall apply to any month in which an overissuance occurred retroactive to March 1, 1979. However, State agency retention of 50 percent of the value of collected intentional Program violation claims and 25 percent of the value of collected inadvertent household error claims as provided in § 273.18(h) shall apply to any collection action retroactive to January 1, 1982. The State agency shall have the option of reinstating any claim previously suspended, but not terminated, under the recovery provisions of regulations implementing the Food Stamp Act of 1977 and, once reinstated, such claims shall be subject to the recovery provisions contained in this amendment. However, the State agency shall not reinstate any amount of a claim compromised or any claim terminated under previous regulations implementing the Food Stamp Act of 1977, as amended. The submission requirements for the Form FNS-209, Status of Claims Against Households, as set forth in § 273.18(h) shall become effective with the quarter ending March 31, 1983.

(59) *Amendment 243.* (i) State agencies shall implement the provisions contained in § 274.1(d) statewide no later than October 1, 1983. FNS will consider requests for waivers to this timeframe on a State-by-State basis if the State agency establishes good cause through submission of written justification of the need for a longer timeframe and submits a plan that

shows when the system will be implemented.

(ii) State agencies shall implement the correction made to § 273.1(a)(1)(iv) retroactive to September 8, 1982.

(iii) The Commonwealth of Puerto Rico shall implement the changes to Part 285 on January 1, 1984, as published in the FEDERAL REGISTER for December 21, 1984.

(60) *Amendment 244.* State agencies shall implement the provisions regarding joint food stamp/public assistance case processing at State agency discretion. The provisions regarding certification periods must be implemented at time of application or at recertification no later than July 1, 1983.

(61) [Reserved]

(62) *Amendment 247.* State agencies must implement the provisions relative to noncompliance with other programs no later than April 1, 1985. The provisions relative to disclosure of information must be implemented no later than February 1, 1985.

(63) *Amendment 251.* State agencies shall implement the program changes required by this amendment as follows:

(i) State agencies shall apply the work registration, job search, and voluntary quit provisions of this rule, amending portions of § 273.7, to new applicants no later than January 2, 1985. The provisions shall apply to participating households at recertification or at the time of office contact for any other reason.

(64) *Amendment 252.* (i) The sanction/incentive provisions of § 275.25 were effective October 1, 1982. The previous provisions of § 275.25 shall continue to apply to the review periods prior to October 1982.

(ii) The funding provisions of § 277.4(b)(2) were effective on October 1, 1982, and shall apply to the October 1982, through September 1983, review period and every review period thereafter.

(iii) The revised funding provisions of § 277.4(b)(7) shall apply to the 6-month review periods October 1, 1981 through March 1982 and April through September 1982.

(65) *Amendment 253.* The provisions of § 274.8(a)(6) (i), (ii), and (iii) shall be implemented the first month beginning on or after the 90th day following publication of this final rule. In that month, the FNS-388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. State agencies will cease submission of the FNS-256 report as of July 1985.

(66) *Amendment 254.* State agencies shall implement the provisions of Amendment 254 no later than October 19, 1983.

(67) [Reserved]

(68) *Amendment 260.* (i) The quality control review provisions contained in Amendment 260 are effective starting with the beginning of Fiscal Year 1984, except as provided in the following sentences. All cases sampled for the six months October 1983 through March 1984 shall be disposed of and reported within 95 days of March 31, 1984. Cases sampled for April 1984 and for months thereafter shall be disposed of and reported according to § 275.21. For example, 90 percent of April cases are due within 75 days of April 30, and 100 percent are due within 95 days of that date. The structure of sample frames specified in § 275.11(e) must be implemented no later than the sample month of October 1984.

(ii) Starting with the October 1983 sample month, cases must be determined complete, not complete, or not subject to review according to §§ 275.12(g) and 275.13(e). As of the beginning of Fiscal Year 1984 the sample sizes stated in § 275.11(b) and related sampling plan requirements are effective, and State agencies are required to meet the completion standard stated in § 275.11(d). State agencies currently sampling at the levels provided in § 275.11(b)(1)(iii) must submit to their respective FNS Regional Offices the reliability statement required by § 275.11(a)(2) within 30 days of the publication of this rule, or no later than the second month after publication of this rule begin sampling at the levels specified in § 275.11(b)(1)(ii).

(69) *Amendment 261.* State agencies shall implement this amendment es-

tablishing the Alaska urban and rural allotment levels and the new cap for Guam no later than August 1, 1984. Households in rural Alaska which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period after September 8, 1982 during which they lived in rural Alaska and participated in the Food Stamp Program in that area. These retroacive benefits will be provided over a period of time not to exceed one year. The amount provided each month will be the higher of $50 or one-twelfth of the total amount due. Households in Guam which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period October 1, 1982, through September 30, 1983, during which they lived in Guam, participated in the Food Stamp Program in that area, and were in household sizes two, five, or eight or more.

(Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2027), as amended by Pub. L. 96-249, 94 Stat. 364-365, May 26, 1980; sec. 101, Pub. L. 96-249, 94 Stat. 357 (7 U.S.C. 2012 and 2019); 91 Stat. 958 (7 U.S.C. 2011-2029); sec. 1, Pub. L. 97-98, 95 Stat. 1282 (7 U.S.C. 2012))

[Amdt 132, 43 FR 47884, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.1, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 272.2 Plan of operation.

(a) *General purpose and content*—(1) *Purpose.* State agencies shall periodically plan and budget program operations and establish objectives. When planning and budgeting for program operations for the next year, State agencies shall consider major corrective action objectives, existing program strengths and deficiencies, and other factors anticipated to impact on the operation of the State's Food Stamp Program and on projected expenditures.

(2) *Content.* The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement. In addition, certain attachments to the Plan are specified in this section and in § 272.3. The requirements for the basic components and attachments are specified in § 272.2(c) and § 272.2(d) respectively. The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act and the FNS-approved State Plan of Operations. The Budget Projection Statement and Program Activity Statement provide information on the number of actions and amounts budgeted for various functional areas such as certification and issuance. The Plan's attachments include the Quality Control Sample plan, the Disaster Plan (currently reserved), and the optional Nutrition Education Plan. The Corrective Action Plan is considered part of the State Plan of Operation, but is submitted separately as prescribed under § 275.22. The State agency shall either include the Workfare Plan in its State Plan of Operation or append the Workfare Plan to the State Plan of Operation, as appropriate, in accordance with § 273.22(b)(3) of this chapter. The Workfare Plan shall be submitted separately, in accordance with § 273.22(b)(1) of this chapter.

(b) *Federal/State Agreement.* (1) The wording of the pre-printed Federal/State Agreement is as follows:

> The State of ——— and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations and the FNS-approved State Plan of Operation. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.
>
> PROVISIONS
>
> The State agrees to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
>
> 2. Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), section 11(c) of the Food Stamp Act of 1977, as amended, the Age Discrimination Act of 1975 (Pub. L. 94-135) and the Rehabilitation

Act of 1973 (Pub. L. 93-112, sec. 504) and all requirements imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food Stamp Act of 1977, as amended.

Date ——————————————

Signature ——————————————
(Governor or Authorized Designee)

Date ——————————————

Signature ——————————————
(Regional Administrator, FNS)

(2) The State agency may propose alternative language to any or all the provisions listed in paragraph (b)(1) of this section. The alternative language is subject to approval by both parties before signature.

(c) *Budget Projection Statement and Program Activity Statement.* (1) The State agency shall submit to FNS for approval a Budget Projection Statement and Program Activity Statement in accordance with the submittal dates in § 272.2(e).

(i) The Budget Projection Statement solicits projections of the total costs for major areas of program operations. The Budget Projection Statement shall be submitted annually and updated as necessary through the year. The Budget Projection Statement shall contain projections for each quarter of the next Federal fiscal year. The State agency shall submit with the Budget Projection Statement a narrative justification documenting and explaining the assumptions used to arrive at the projections. The narrative shall cover such subjects as: The number and salary level of employees; other factors affecting personnel costs including anticipated increases in pay rates or benefits, and reallocations of staff among units or functions, insofar as these might result in cost increases or decreases; costs for purchasing, leasing, and maintaining equipment and space, especially as concerns any upcoming, one-time-only purchases of new capital assets such as ADP equipment, renegotiation of leases, changes in depreciation rates or procedures, relocation of offices, maintenance and renovation work, and inflation; issuance system costs, including renegotiation of issuing agent fees and plans to change issuance systems; changes in caseload and factors contributing to increases or decreases in the number of participants; recertifications, including the anticipated impact of economic conditions (and in particular unemployment) and seasonality; cost implications of corrective action plans; anticipated changes in program regulations and operating guidelines and instructions; training needs; travel costs; and adjustments in insurance premiums. The narrative should cover as many of the items listed above, and any other items deemed relevant by the State agency, that will have a significant impact on costs. The State agency is not required to discuss every item in the list in every submission of a Budget Projection Statement. The narrative should concentrate on items that account for increases or decreases in costs from the preceding submissions.

(ii) The Program Activity Statement, to be submitted annually, solicits a summary of program activity for the State agency's operations during the preceding fiscal year.

(2) The organizational outline submitted in 1982 as an attachment to the Program Activity Statement shall be considered the basic outline. Henceforth, changes to this outline shall be provided to FNS as they occur. The outline contains the following information:

(i) The position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure, i.e., the Program Director in relation to the Commissioner of Welfare;

(ii) A description of the organizational structure through which the State agency will administer and operate the Food Stamp Program, including whether the Program is State, county, locally, or regionally-administered; whether the workers have single Food Stamp Program or multi-program functions; and the title and position of the individual or panel designated as the hearing authority and whether officials conduct both fair and fraud hearings.

(iii) A description of the funding arrangement by which State, county, and local jurisdictions will contribute to the State agency portion of administrative costs;

(iv) The position within the State organizational structure of the Performance Reporting System (PRS) coordinator, including whether the PRS coordinator is full or part-time, and is responsible for direct supervision over Quality Control or Management Evaluation or if these functions are handled separately, and whether quality control reviewers have single Food Stamp Program or multi-program review responsibilities;

(v) The position of the training coordinator and whether this is a full or part-time position; and

(vi) The organizational entity responsible for corrective action.

(3) *Additional attachments.* The following shall be attachments or addenda to the Program Activity Statement and shall be submitted as required in § 272.2(e)(3):

(i) The special plan required by § 277.15 when requesting Federal funding at the present 75 percent level for investigation and prosecution activities; and

(ii) For informational purposes (not subject to approval as part of the plan submission procedures), the agreements between the State agency and the United States Postal Service for coupon issuance, between the State agency and the Social Security Administration for supplemental security income/food stamp joint application processing and for routine user status, and between the State agency and the State Employment Security agency for work registration and job search.

(d) *Planning documents.* (1) The following planning documents shall be submitted:

(i) Quality Control Sampling Plan as required by § 275.11(a)(4);

(ii) Disaster Plan as required by § 280.6 (currently reserved), or certification that a previously submitted Disaster Plan has been reviewed and remains current;

(iii) Nutrition Education Plan if the State agency elects to request Federal Food Stamp Program administrative matching funds to conduct nutrition education programs as discussed in paragraph (d)(2) of this section.

(2) *Nutrition Education Plan.* If submitted, the Nutrition Education Plan shall contain:

(i) The number and positions of staff that will be conducting nutrition education;

(ii) Description of activities in the nutrition education program; and

(iii) Assurance that nutrition education programs for which USDA provides Food Stamp Program administrative matching funds are conducted exclusively for the benefit of Food Stamp Program applicants and participants and do not duplicate USDA's Expanded Food and Nutrition Education Program's efforts in the State.

(e) *Submittal requirements.* States shall submit to the appropriate FNS Regional Office for approval each of the components of the Plan of Operation for approval within the timeframes established by this paragraph. Approval or denial of the document may be withheld pending review by FNS. However, if FNS fails to either approve, deny, or request additional information within 30 days, the document is approved. If additional information is requested, the State agency shall provide this as soon as possible, and FNS shall approve or deny the Plan within 30 days after receiving the information.

(1) The Federal/State agreement shall be signed by the Governor of the State or authorized designee and shall be submitted to FNS within 120 days after publication of these regulations in final form and shall remain in effect until terminated.

(2) The Budget Projection Statement and Program Activity Statement shall be signed by the head of the State agency or its chief financial officer and submitted as follows:

(i) The Budget Projection Statement shall be submitted annually, no later than August 15 of each year.

(ii) The Program Activity Statement shall be submitted annually, not later than 45 days after the end of the State agency's fiscal year. The first report is due 45 days after the end of the State's 1981 fiscal year. The first report is not required to contain information that is not currently captured by the State agency's information system. State agencies shall amend their data gathering systems so that all items can be completed on the second report, due for the 1982 fiscal year.

(3) Changes to the organizational outline required by § 272.2(c)(2) and the agreements with other agencies outlined in § 272.2(c)(3)(ii) shall be provided to FNS as changes occur. The attachments outlined in § 272.2(c)(3)(i) shall be submitted annually with the Program Activity Statement.

(4) The Quality Control Sampling Plan shall be signed by the head of the State agency and submitted to FNS prior to implementation as follows:

(i) According to the timeframes specified in paragraph (e)(4)(ii) of this section, prior to each annual review period each State agency shall submit any changes in their sampling plan for FNS approval or submit a statement that there are no such changes. These submittals shall include the statement required by § 275.11(a)(2), if appropriate. The Quality Control Sampling Plan in effect for each State agency as of the beginning of Fiscal Year 1984 shall be considered submitted and approved for purposes of this section, provided that the State agency has obtained prior FNS approval of its sampling plan.

(ii) Initial submissions of and major changes to sampling plans and changes in sampling plans resulting from general changes in procedure shall be submitted to FNS for approval at least 60 days prior to implementation. Minor changes to approved sampling plans shall be submitted at least 30 days prior to implementation.

(5) Disaster Plan. [Reserved]

(6) The Nutrition Education Plan shall be signed by the head of the State agency and submitted prior to funding of nutrition education activities when the State agency elects to request Federal administrative matching funds to conduct Nutrition Education Programs. The plan shall then be submitted annually no later than August 15. The initial submission may be for a period of less than or more than a year in order to meet the August 15 deadline.

(7) Where applicable, State agencies shall consult (on an ongoing basis) with the tribal organization of an Indian reservation about those portions of the State Plan of Operation pertaining to the special needs of the members of the tribe.

(f) *Revisions.* Revisions to any of the planning documents or the Program and Budget Summary Statement shall be prepared and submitted for approval to the appropriate FNS Regional Office in the same manner as the original document. However, revisions to the budget portion of the Budget Projection Statement and Program Activity Statement shall be submitted as follows:

(1) *Program funds.* (i) For program funds, State agencies shall request prior approvals promptly from FNS for budget revisions whenever:

(A) The revision indicates the need for additional Federal funding;

(B) The program budget exceeds $100,000, and the cumulative amount of transfers among program functions exceeds or is expected to exceed five percent of the program budget. The same criteria apply to the cumulative amount of transfers among functions and activities when budgeted separately for program funds provided to a subagency, except that FNS shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(C) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs; or

(D) The revisions pertain to the addition of items requiring prior approval by FNS in accordance with the provisions of the applicable cost principles specified in Part 277 Appendix A of the regulations.

(ii) No other changes to the Program fund budget require approval from FNS. Examples of changes which do not require Federal approval are: The use of State agency funds to accomplish program objectives over and above the State agency minimum share included in the approved Program budget; and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(iii) The requirements of paragraph (f)(1)(i)(B) of this section may be waived by FNS provided that:

(A) No different limitation or approval requirement may be imposed; and,

(B) FNS shall not permit a transfer which would cause any Federal appropriation, or part, thereof, to be used for purpose other than those intended.

(2) *Authorized funds exceeding State agency needs.* When it becomes apparent that the funds authorized by the Letter of Credit will exceed the needs of the State agency, FNS will make appropriate adjustments in the Letter of Credit in accordance with Part 277.

(3) *Method of requesting approvals.* When requesting approval for budget revisions, State agencies shall use the same format as the Budget Projection Statement used in the previous submission. However, State agencies may request by letter the approvals required by paragraph (f)(1)(i)(D) of this section.

(4) *Notification of approval or disapproval.* Within 30 days from the date of receipt of the request for budget revisions, FNS shall review the request and notify the State agency whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, FNS shall inform the State agency in writing as to when the decision will be made.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 156, 46 FR 6315, Jan. 21, 1981, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982; Amdt. 240, 48 FR 1173, Jan. 11, 1983; Amdt. 222, 48 FR 6315, Feb. 11, 1983; Amdt. 250, 48 FR 22130, May 17, 1983; Amdt. 260, 49 FR 6303, Feb. 17, 1984; Amdt. 262, 49 FR 50596, Dec. 31, 1984]

§ 272.3 Operating guidelines and forms.

(a) *Coverage of operating guidelines.* State agencies shall prepare and provide to staff responsible for administering the Program written operating procedures. In those States which have State regulations that outline these Operating Procedures, these are equivalent to Operating Guidelines. Other examples of Operating Guidelines are manuals, instructions, directives or transmittal memos. The following categories shall be included in the Operating Guidelines:

(1) Certification of households, including but not limited to:

(i) Application processing;

(ii) Nonfinancial eligibility standards;

(iii) Financial criteria and the eligibility determination;

(iv) Actions resulting from eligibility determinations;

(v) Determining eligibility of special situation households as specified in § 273.11;

(vi) Additional certification functions such as processing changes during certification periods and reporting requirements for households;

(vii) Lost benefits/claims against households;

(viii) Fair/fraud hearings;

(ix) A list of Federal and State energy assistance programs that qualify for the resource and income exclusions discussed in § 273.8(e)(14) and § 273.9(c)(11) and how these payments are identified as being eligible for the exemption.

(2) Issuance, accountability, and reconciliation;

(3) The Performance Reporting System, including instructions or directives for conducting quality control and management evaluation reviews and the quality control sample plan;

(4) A description of the training program, including a listing of the organizational component which conducts training, to whom and how often training is provided;

(5) The fair/fraud hearing procedures if not included in the Certification Handbook.

(6) The consultation process (where applicable) with the tribal organization of an Indian reservation about the State Plan of Operation and Operating Guidelines in terms of the special needs of members of the tribe and the method to be used for incorporating the comments from the tribal organization into the State Plan of Operations and Operating Guidelines.

(b) *Submittal of operating guidelines and forms.* (1) State agencies shall develop the necessary forms, except the Application for Food Stamps, and other operating guidelines to implement the provisions of the Food Stamp Act and regulations. In accordance with § 273.2(b) and § 273.12(b)(1) State agencies shall use the FNS-designed Application for Food Stamps or an FNS-approved deviation.

(2) State agencies shall submit their operating guidelines and forms and amendments to these materials to FNS for review and audit purposes simultaneous with distribution within the States.

(3) State agencies may request that FNS review and provide comments on their operating guidelines, forms and any amendments to these materials prior to distribution of the materials within the State.

(4) If deficiencies are discovered in a State agency's materials, FNS shall provide the State agency with written notification.

(c) *Waivers.* (1) The Administrator of the Food and Nutrition Service or Deputy Administrator for Family Nutrition Programs may authorize waivers to deviate from specific regulatory provisions. Requests for waivers may be approved only in the following situations:

(i) The specific regulatory provision cannot be implemented due to extraordinary temporary situations such as a sudden increase in the caseload due to the loss of SSI cash-out status;

(ii) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(iii) Unique geographic or climatic conditions within a State preclude effective implementation of the specific regulatory provision and require an alternate procedure; for example, the use of fee agents in Alaska to perform many of the duties involved in the certification of households including conducting the interviews.

(2) FNS shall not approve requests for waivers when:

(i) The waiver would be inconsistent with the provisions of the Act; or

(ii) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that States submit appropriate justification as part of the State Plan of Operation.

(4) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers shall include but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) The portion of caseload or potential caseload which would be affected and the characteristics of the affected caseload such as geographic, urban, or rural concentration;

(iii) Anticipated impact on service to participants or potential participants who would be affected;

(iv) Anticipated time period for which the waiver is needed; and

(v) Thorough explanation of the proposed alternative provision to be used in lieu of the waived regulatory provision.

(5) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 5(f) of the Act. Waivers authorized by this

paragraph are not subject to the public comment provisions of § 272.3(d).

(6) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 6(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(d) *Public comment.* State agencies shall solicit public input and comment on overall Program operations as State laws require or as the individual State agency believes would be useful.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[46 FR 6315, Jan. 21, 1981, as amended by Amdt. 184, 47 FR 22697, May 25, 1982; Amdt. 228, 47 FR 50180, Nov. 5, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 222, 48 FR 6316, Feb. 11, 1983; Amdt. 225, 48 FR 16830, Apr. 19, 1983]

§ 272.4 Program administration and personnel requirements.

(a) *Merit personnel.* (1) State agency personnel used in the certification process shall be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission under section 208 of the Intergovernmental Personnel Act of 1970.

(2) State agency employees meeting the standards outlined in paragraph (a)(1) of this section shall perform the interviews required in § 273.2(e). Volunteers and other non-State agency employees shall not conduct certification interviews or certify food stamp applicants. Exceptions to the use of State merit system personnel in the interview and certification process are specified in § 273.2(k) for SSI households and Part 280 for disaster victims. State agencies are encouraged to use volunteers in activities such as outreach, prescreening, assisting applicants in the application and certification process, and in securing needed verification. Individuals and organizations who are parties to a strike or lockout, and their facilities, may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the State agency, coupon issuers, coupon bulk storage points, and Federal employees involved in administration of the program shall be permitted access to food coupons, ATP's, or other issuance documents.

(b) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (b) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language;

(2) The State agency shall provide materials used in Program informational activities in the appropriate language(s) as follows:

(i) In project areas with less than 2,000 low-income households, if approximately 100 or more of those households are of a single-language minority;

(ii) In project areas with 2,000 or more low-income households, if approximately 5 percent or more of those households are of a single-language minority; and

(iii) In project areas with a certification office that provides bilingual service as required in paragraph (b)(3) of this section.

(3) The State agency shall provide both certification materials in the appropriate language(s) and bilingual staff or interpreters as follows:

(i) In each individual certification office that provides service to an area containing approximately 100 single-language minority low-income households; and

(ii) In each project area with a total of less than 100 low-income households if a majority of those households are of a single-language minority.

(A) Certification materials shall include the food stamp application form, change report form and notices to households.

(B) If notices are required in only one language other than English, notices may be printed in English on one side and in the other language on the reverse side. If the certification office is required to use several languages, the notice may be printed in English and may contain statements in other languages summarizing the purpose of the notice and the telephone number to call for more information. For example, a notice of eligibility could in the appropriate language(s) state: "Your application for food stamps has been approved in the amount stated above. If you need more information telephone ——————."

(4) In project areas with a seasonal influx of non-English-speaking households, the State agency shall provide bilingual materials and staff or interpreters, if during the seasonal influx the number of single-language minority low-income households which move into the area meets or exceeds the requirements in paragraphs (b) (2) and (3) of this section.

(5) The State agency shall insure that certification offices subject to the requirements of paragraph (b) (3) or (4) of this section provide sufficient bilingual staff or interpreters for the timely processing of non-English-speaking applicants.

(6) The State agency shall develop estimates of the number of low-income single-language minority households, both participating and not participating in the program, for each project area and certification office by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P-25, No. 627) and knowledge of project areas and areas serviced by certification offices. Local Bureau of Census offices, Community Services Administration offices, community action agencies, planning agencies, migrant service organizations, and school officials may be important sources of information in determining the need for bilingual service. If these information sources do not provide sufficient information for the State agency to determine if there is a need for bilingual staff or interpreters, each certification office shall, for a 6-month period, record the total number of single-language minority households that visit the office to make inquiries about the program, file a new application for benefits, or be recertified. Those certification offices that are contacted by a total of over 100 single-language minority households in the 6-month period shall be required to provide bilingual staff or interpreters. State agencies shall also combine the figures collected in each certification office to determine the need for bilingual outreach materials in each project area.

(c) *Internal controls*—(1) *Requirements.* In order to safeguard certification and issuance records from unauthorized creation or tampering, the State agency shall establish an organizational structure which divides the responsibility for eligibility determinations and coupon issuance among certification, data management, and issuance units. The certification unit shall be responsible for the determination of household eligibility and the creation of records and documents to authorize the issuance of coupons to eligible households. The data management unit, in response to input from the certification unit, shall create and maintain the household issuance record (HIR) master file on cards, computer discs, tapes, or similar memory devices. The issuance unit shall provide certified households with the authorized allotments. In cases where personnel are periodically, or on a part-time basis, shifted from one unit to another, supervisory controls should be sufficient to assure that the unauthorized creation or modification of case records is not possible.

(2) *Exceptions.* With prior written FNS approval, a project area may combine unit responsibilities if the controls specified in paragraph (c)(1) of this section have been found to be administratively infeasible.

(i) To receive approval of combined operations, the State agency shall establish special review requirements which at a minimum include:

(A) Biweekly reconciliation and verification of transactions; and

(B) Semiannual comparison of HIR cards and case records as required by § 274.6(d) and, at least once every other month, second-party review of certification actions.

(ii) The State agency shall annually determine whether each combined operation continues to be justified and shall so advise FNS in writing.

(d) *Training*—(1) *Minimum requirements.* (i) The State agency shall institute a continuing training program for food stamp eligibility workers, hearing officials, and performance reporting system reviewers. Sufficient training shall be provided to these people prior to their initial assumption of duties and, subsequently, on an as-needed basis.

(ii) The State agency shall provide sufficent staff time to ensure that the minimum training requirements are met.

(2) *FNS Review.* FNS will review the effectiveness of State agency training based on information obtained from the performance reporting system and other sources.

(e) *Court suit reporting.* (1) State agency responsibility. (i) In the event that a State agency is sued by any person(s) in a State or Federal Court in any matter which involves the State agency's administration of the Food Stamp Program, the State agency shall immediately notify FNS that suit has been brought and shall furnish FNS with copies of the original pleadings. State agencies involved in suits shall, upon request of FNS, take such action as is necessary to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of USDA or the Administrator of FNS, as parties to the suit. FNS may request to join the following types of suits:

(A) Class action suits;

(B) A suit in which an adverse decision could have a national impact;

(C) A suit challenging Federal policy such as a provision of the Act or regulations or an interpretation of the regulations; or,

(D) A suit based on an empirical situation that is likely to recur.

(ii) FNS may advise a State agency to seek a settlement agreement of a court suit if the State agency is being sued because it misapplied Federal policy in administering the Program.

(iii) State agencies shall notify FNS when court cases have been dismissed or otherwise settled. State agencies shall also provide FNS with information that is requested regarding the State agency's compliance with the requirements of court orders or settlement agreements.

(2) FNS shall notify all State agencies of any suits brought in Federal court that involve FNS' administration of the Program and which have the potential of affecting many State agencies' Progam operations. (State agencies need not be notified of suits brought in Federal Court involving FNS' administration of the Program which may only affect Program operations in one or two States.) The notification provided to State agencies shall contain a description of the Federal policy that is involved in the litigation.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47884, Oct. 17 1978, as amended by Amdt. 168, 45 FR 77263, Nov. 21, 1980; Amdt. 221, 47 FR 35168, Aug. 13, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 237, 47 FR 57668, 57669, Dec. 28, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984]

§ 272.5 Program informational activities.

(a) *Definition.* "Program informational activities" are those activities that convey information about the Program, including household rights and responsibilities, to applicant and recipient households through means such as publications, telephone hotlines, and face-to-face contacts.

(b) *Minimum requirements.* State agencies shall comply with the following minimum information requirements.

(1) *Nutrition information.* (i) FNS will supply State agencies with posters and pamphlets containing information regarding foods with substantial amounts of the recommended daily allowances of protein, minerals, and vitamins; menus making use of these foods; and the relationship between health and diet;

(ii) Printed materials such as posters, fliers, and pamphlets, that explain the Special Supplemental Food Program for Women, Infants and Children (WIC) and, where available, the

Commodity Supplemental Food Program (CSF) shall be supplied by agencies administering the WIC and CSF programs (where available);

(iii) State agencies shall display the posters and make the pamphlets available at all food stamp and public assistance offices.

(2) Rights and responsibilities. State agencies shall inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the State agencies deem appropriate.

(3) All Program informational material shall be available in languages other than English as required in § 272.4(b) and shall include a statement that the Program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin or political belief.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 207, 47 FR 52334, Nov. 19, 1982. Redesignated by Amdt. 211, 47 FR 53316, Nov. 26, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984]

§ 272.6 Nondiscrimination compliance.

(a) *Requirement.* State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, section 504), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR Part 15.

(b) *Right to file a complaint.* Individuals who believe that they have been subject to discrimination as specified in paragraph (a) of this section may file a written complaint with the Secretary or the Administrator, FNS, Washington, DC 20250, and/or with the State agency, if the State agency has a system for processing discrimination complaints. The State agency shall explain both the FNS and, if applicable, the State agency complaint system to each individual who expresses an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint in either or both systems.

(c) *FNS complaint requirements.* (1) Complaints shall contain the following information to facilitate investigations:

(i) The name, address, and telephone number or other means of contacting the person alleging discrimination.

(ii) The location and name of the organization or office which is accused of discriminatory practices.

(iii) The nature of the incident or action or the aspect of program administration that led the person to allege discrimination.

(iv) The reason for the alleged discrimination (age, race, color, sex, handicap, religious creed, national origin, or political belief).

(v) The names, titles (if appropriate), and addresses of persons who may have knowledge of the alleged discriminatory acts.

(vi) The date or dates on which the alleged discriminatory actions occurred.

(2) If a complainant makes allegations verbally and is unable or is reluctant to put the allegations in writing, the FNS employee to whom the allegations are made shall document the complaint in writing. Every effort shall be made by the individual accepting the complaint to have the complainant provide the information specified in paragraph (c)(1) of this section.

(3) Complaints will be accepted by the Secretary or the Administrator, FNS, even if the information specified in paragraph (c)(1) of this section is not complete. However, investigations will be conducted only if information concerning paragraphs (c)(1) (ii), (iii), (iv) of this section is provided.

(4) A complaint must be filed no later than 180 days from the date of the alleged discrimination. However,

the time for filing may be extended by the Secretary.

(d) *State agency complaint requirements.* (1) The State agency may develop and use a State agency complaint system.

(2) The State agency shall submit to FNS a report on each discrimination complaint processed at the State level. The report shall contain as much information in paragraph (c)(1) of this section as is available to the State agency, the findings of the investigation, and, if appropriate, the corrective action planned or taken.

(e) *Reviews.* [Reserved]

(f) *Public notification.* The State agency shall: (1) Publicize the procedures described in paragraphs (b) and (c) of this section, and, if applicable, the State agency's complaint procedures; (2) insure that all offices involved in administering the program and that also serve the public display the nondiscrimination poster provided by FNS; and (3) insure that participants and other low-income households have access to information regarding nondiscrimination statutes and policies, complaint procedures, and the rights of participants, within 10 days of the date of a request.

(g) *Data collection.* The State agency shall obtain data on households by racial/ethnic category. The racial/ethnic categories are: American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), Hispanic, and white (not of Hispanic origin). The State agency may request applicants to identify voluntarily their race or ethnicity on the application form. The application form in these States shall clearly indicate that the information is voluntary, that it will not affect eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency shall develop alternative means of providing the racial and ethnic data on households, such as by observation during the interview, when the information is not voluntarily provided by the household on the application form.

(h) *Reports.* As required by FNS, the State agency shall report the racial/ethnic data on participating households on forms provided by FNS.

(91 Stat. 958, (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47884, Oct. 17, 1979. Redesignated by Amdt. 211, 47 FR 53315, Nov. 26, 1982]

§ 272.7 Procedures for program administration in Alaska.

(a) *Purpose.* To achieve the efficient and effective administration of the Food Stamp Program in certain rural areas of Alaska, FNS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas.

(b) *Applicability.* The regulations established in this section except for paragraphs (f) *Hotlines* and (j) *Resources* of this section shall apply only in those areas of Alaska which are designated by FNS as "rural". All regulations not specifically modified by this section shall remain in effect. The State agency, in consultation with FNS, shall establish the criteria for designating areas of the State as "rural" taking into consideration such factors as population concentrations, weather and road conditions, the risk to the health or safety of applicants in traveling, and the regularity of mail service. The State agency shall, in consultation with FNS, determine those areas that meet the rural criteria. The criteria for designating rural areas and the designated areas shall be identified in the Alaska State Plan of Operation as an addendum to the Program and Budget Summary Statement.

(c) *Definitions.* "*Fee agent*" means a paid agent who, on behalf of the State, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

"*Rural Alaska TFP*" refers to a Thrifty Food Plan (TFP) that is 50.7 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: North Slope Borough, Kobuk Census Area, Nome Census Area, Yukon-Koyukuk Census Area, Wade Hampton Census Area, Bethel Census Area, Bristol Bay Borough, and Dillingham Census Area.

"*State agency*" for purposes of this section shall include Regional and District offices. It shall not include fee agents.

"*Urban Alaska TFP*" refers to a Thrifty Plan (TFP) that is 6.4 percent higher than the Anchorage TFP as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: Fairbanks-North Star Borough, Southeast Fairbanks Census Area, Matanuska-Susitna Borough, Anchorage Borough, Kenai Peninsula Borough, Kodiak Island Borough, Valdez-Cordova Census Area, Skagway-Yakutat-Angoon Census Area, Haines Borough, Juneau Borough, Sitka Borough, Wrangell-Petersburg Census Area, Prince of Wales-Outer Ketchikan Census Area, Aleutian Island Census Area, and Ketchikan Gateway Borough.

(d) *Merit personnel.* In addition to the volunteer activities prescribed in § 272.4(a)(2), fee agents may be used by the State agency to conduct the certification interviews required by § 273.2(e).

(e) *Training.* The State agency shall institute a continuing training program for fee agents. Sufficient training shall be provided to these people prior to their initial assumption of duties and, subsequently, on an as-needed basis. The State agency shall provide sufficient staff time to ensure that the minimum training requirements are met.

(f) *Application processing.* The application processing standards contained in § 273.2 are modified to the following extent:

(1) *Filing an application.* The date the application is first received by a fee agent, the date it is mailed to a State agency office and the date it is filed with a State agency office shall be documented by recording the dates on the application. An application is considered filed for purposes of this section when it is received by an office of the State agency.

(2) *Normal processing standards.* The State agency shall issue benefits to eligible households as soon as possible.

(i) If the signed application is first submitted by a household to a fee agent, the fee agent shall:

(A) Record the date the application is received, (B) conduct the interview, (C) obtain the necessary verification, (D) record the date the application is mailed, and (E) mail the application to a State agency office within five days of the date the application was received by the fee agent. The household shall be given the maximum amount of time to provide verification requested by the fee agent as long as the five-day processing period is met. The State agency office shall record the date that the application is filed, and insure that the application process is completed and eligible households are provided an opportunity to participate as soon as possible but no later than 30 days after the application is filed with the State agency.

(ii) If the signed application is submitted in person by a rural resident or its authorized representative directly to the State agency, bypassing the fee agent, the State agency shall complete the application process and provide eligible households an opportunity to participate as soon as possible but no later than 30 days after the application is filed.

(iii) If the signed application is submitted by mail by a rural resident directly to the State agency, bypassing the fee agent, the State agency shall either (A) contact the household directly, conduct the interview and secure necessary verification or (B) request the fee agent to complete the interview process and submit the required information to the State agency. Regardless of whether the State agency or the fee agent conducts the interview, the processing time to meet the 30 day standard shall commence with the date the application was initially received by the State agency. If the State agency cannot process a case within the required time period because it has to contact the household for additional information or verification, the procedures established in § 273.2(h) regarding delays in processing shall be followed except that the household shall submit the information or verification so that it will be received by the State agency by the 30th day after the State agency's initial letter or a verbal request for the information or verification.

(3) *Expedited service.* Households determined eligible to receive expedited service shall be issued benefits as soon as possible.

(i) If the signed application is first received by a fee agent, the fee agent shall:

(A) Record the date the application is received, (B) conduct the interview, (C) obtain the necessary verification, (D) record the date the application is mailed and (E) mail the application to a State agency office within 5 days of the date the application was received by the fee agent. The State agency office shall record the date the application was filed, complete the application process and, for households eligible for expedited service, mail the coupons no later than the close of business of the second working day following the date the application was filed at the State agency.

(ii) If the signed application is submitted in person by a rural resident or its authorized representative directly to the State agency, bypassing the fee agent, the State agency shall conduct the interview and issue coupons to households eligible for expedited service in accordance with the time standards contained in § 273.2(i)(3) of the regulations.

(iii) If the completed, signed application is submitted by mail by a rural resident directly to the State agency, bypassing the fee agent, the State agency shall conduct an interview with the household either directly or through the intermediary services of a fee agent. If an incomplete application is submitted directly to the State agency by mail, the State shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radio phone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State agency shall complete the application and process the case. Because of the mailing time in rural areas, the State agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed. The household, if determined eligible, shall be entitled to benefits retroactive to the first day of the month in which the application was first received by the State agency.

(4) *SSI joint processing.* SSA workers shall mail all jointly processed applications to the appropriate State agency office within five days of receipt of the application. The dates the application is received and mailed shall be recorded on the application. The application shall be mailed from a location as close to the State agency office as is feasible. Jointly processed applications shall be considered filed for purposes of timely processing when they are received by a State agency office. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed application was received by the SSA worker.

(g) *Interviews.* The State agency or fee agent shall conduct a face-to-face interview with the household at the State agency office or fee agent location prior to certification or recertification except in the following instances.

(1) The State agency or fee agent shall either conduct a home visit or conduct the interview by telephone or other means of communication when a household or its authorized representative is unable to come to the State agency office or fee agent for the reasons specified in § 273.2(e)(2) which include transportation difficulties and hardships such as prolonged severe weather. If a household objects to being interviewed by telephone or radio phone on grounds of privacy, the State agency shall conduct the inter-

view using private means such as written, mailed correspondence to obtain and transmit necessary information.

(2) When a face-to-face interview cannot be conducted in time to meet the expedited service standards, the State agency or fee agent may conduct an interview using a telephone or other means of communication such as a radio phone unless the household objects on grounds of privacy.

(3) The State agency may postpone the interview until after the household is certified when:

(i) A household lives in a remote area, (ii) no fee agent or eligibility worker is reasonably accessible, (iii) a telephone interview cannot be conducted, or the household objects on grounds of privacy, and (iv) the administrative costs of conducting the interview would be extremely high. The eligibility worker shall exercise prudent judgment when dealing with these cases and fully document the eligibility decision in the case file. Such households shall be interviewed and the eligibility decision and documentation shall be re-examined when an eligibility worker or fee agent visits the community in which the household resides.

(h) *Determining household eligibility and benefit level.* If a household in a rural area that is serviced by a fee agent first submits its application to the fee agent, the household shall, if determined eligible, receive benefits retroactive to the date the application is received by the fee agent. If a household in a rural area that is serviced by a fee agent submits its signed application directly to a State agency office, the household shall, if determined eligible, receive benefits retroactive to the date the application is received by the State agency.

(i) *Resources.* In areas of the State where there are no licensing requirements, snowmobiles and boats used by the household for basic transportation shall be evaluated in accordance with § 273.8(h) even though they are unlicensed.

(j) *Reporting changes.* The State agency shall allow the household to choose to report changes either directly to the State agency or to the fee agent. If reported to the fee agent, the fee agent shall record the date the change was reported and the date the change is mailed to the State agency office on the change report and mail the change report to the State agency office within two working days of the date of receipt. The household's obligation to report the change will have been met if it submits the change to the fee agent within 10 days of the date the change becomes known to the household. However, for purposes of State agency action for increasing or decreasing benefits, the change will be considered to have been reported when it is received by a State agency office. To insure that the time standards for acting on changes are met, the State agency shall record the date the change is received on the change report.

(k) *Recertification*—(1) *General standards.* In rural areas, the State agency shall provide each household entitled to a Notice of Expiration such notice no earlier than one month prior to, nor later than the first day of, the household's last month of certification. Households in the service area of a fee agent shall be allowed to submit their applications for recertification either directly to the State agency or to the fee agent for forwarding to the State agency. Households which are certified for one month, and households which are initially certified for two months during the month following the month of application, shall be provided a Notice of Expiration at the time of certification. The State agency may provide a Notice of Expiration at the time of certification to households certified for two months in the month in which they apply.

(2) *Timely reapplications.* (i) Households provided a Notice of Expiration at the time of certification, except those that are certified for two months during the month in which they apply, shall have 15 days from the date the notice is received to file a timely application for recertification with the State agency. Households that wish to submit their reapplications directly to the fee agent shall be advised to allow sufficient time for the fee agent to forward the application so that it will be received by the State agency within the 15 day period.

(ii) All other households, including those that are certified for two months during the month in which they apply, shall be considered to have timely reapplied if the application is received by the State agency by the 15th day of the last month of the certification period. Households that wish to submit their reapplications to the fee agent shall be advised to allow sufficient time for the fee agent to forward the application so that it will be received by the State agency by the 15th day of the last month of the certification period.

(l) *Agency conferences.* In those instances where households wish to contest a denial of expedited service and a personal conference cannot be held within the two-day standard, the State agency may, at its option, conduct the expedited agency conference required by § 273.15(d) within two working days using a telephone or other similar means of communication provided that the household does not object on grounds of privacy. If the household objects to a phone conference, the State agency shall conduct the conference as soon as possible through a personal conference or other private means such as written, mailed correspondence.

(m) *Fair hearings and fraud hearings.* The State agency may, at its option, conduct fair hearings and administrative fraud hearings using a telephone or other means of communication if the time standards contained in §§ 273.15 and 273.16 respectively cannot be met using the normal procedures for households that live in rural areas that are inaccessible due to weather conditions and/or distance. If the household objects to the use of a telephone or radio phone on grounds of privacy, the State agency shall use some means of private communication such as written, mailed correspondence to conduct the hearing within the specified time.

(n) *Issuance services.* (1) With the approval of FNS, coupons may be mailed on a quarterly or semiannual basis to certain rural areas of Alaska when provisions are not available on a monthly basis. The decision to allow the distribution of coupons in this manner will be made on an annual basis, separate from the determination as to which areas of Alaska are to be designated as rural areas. These areas shall be listed in the State's Plan of Operation in the same section as the rural area designations. The State agency shall advise households that live in rural areas where quarterly or semiannual allotments are authorized. If, as the result of the issuance of quarterly or semiannual allotments, food coupons are overissued or underissued, the State agency shall process claim determinations and restore lost benefits.

(2) The State agency may choose among a wide variety of issuance methods to fullfill the issuance service needs of the low-income people in the State. The methods include, but are not limited to, the use of contract issuance agents such as banks, post offices, credit unions, etc.; government issuance offices; itinerant issuance offices; mobile issuance units; and mail issuance. Mail issuance may be used to comply with any or all of the requirements specified below.

(3) Those households comprised of elderly or disabled members which have difficulty reaching an issuance office to obtain their regular monthly allotments shall be given assistance in obtaining their coupons. The State agency shall assist these households by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(91 Stat. 958 (7 U.S.C. 2011-2029))

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PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Sec.

273.1 Household concept.
273.2 Application processing.
273.3 Residency.
273.4 Citizenship and alien status.
273.5 Students.

Sec.
273.6 Social security numbers.
273.7 Work registration requirements.
273.8 Resource eligibility standards.
273.9 Income and deductions.
273.10 Determining household eligibility and benefit levels.
273.11 Action on households with special circumstances.
273.12 Reporting changes.
273.13 Notice of adverse action.
273.14 Recertification.
273.15 Fair hearings.
273.16 Disqualification for intentional Program violation.
273.17 Restoration of lost benefits.
273.18 Claims against households.
273.19 [Reserved]
273.20 SSI cash-out States.
273.21 Monthly Reporting and Retrospective Budgeting (MRRB).
273.22 Optional workfare program.

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§ 273.1 Household concept.

(a) *Household definition.* (1) A household may be composed of any of the following individuals or groups of individuals:

(i) An individual living alone;

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others;

(iii) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(iv) An individual who is 60 years of age or older living with others (and the spouse of such individual) who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a nondisease-related, severe, permanent disability. However, the income (all income included under § 273.9(b)) of the others with whom the individual resides (excluding the income of such individual's spouse) cannot exceed 165 percent of the poverty line.

(2) Such individuals or groups of individuals may not participate if they are residents of an institution, except as otherwise specified in paragraph (e) of this section, or residents of a commercial boarding house, or living with others and paying compensation to the others for meals and lodging, except as otherwise specified in paragraph (c) of this section.

(3) In no event shall nonhousehold member status (as described in the provisions of paragraph (b) of this section) or separate household status be granted to:

(i) Parents living with their natural, adopted, or step children or such children living with such parents, unless at least one parent is elderly or disabled as defined in § 271.2;

(ii) Children under 18 years of age under the parental control of an adult member of the household; or

(iii) A spouse of a member of the household (as defined in § 271.2).

(iv) Siblings (natural, adopted, half or step brothers and sisters), unless at least one sibling is elderly or disabled as defined in § 271.2.

(b) *Nonhousehold and excluded household members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility or allotment. Nonhousehold members who are otherwise eligible may participate in the Program as separate households.

(1)(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *Live-in-attendants.* Individuals who reside with a household to provide medical, housekeeping, child care or other similar personal services.

(iii) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotments in its State supplemental payments.

(iv) *Students.* Persons enrolled in an institution of higher education who are ineligible because they fail to meet the eligibility criteria set forth in § 273.5.

(v) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(2) *Excluded household members.* The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of excluded household member shall be considered available to the remaining household members in accordance with § 273.11(c). Excluded household members may not participate in the Program as separate households.

(i) *Ineligible aliens.* Individuals who do not meet the citizenship or eligible alien status in § 273.4(a).

(ii) *SSN disqualified.* Individuals disqualified for failure to provide an SSN, as set forth in § 273.6.

(iii) *Intentional Program violation disqualified.* Individuals disqualified for intentional Program violation, as set forth in § 273.16.

(iv) *Workfare sanctioned.* Individuals against whom a sanction was imposed while they were participating in a household disqualified for failure to comply with workfare requirements, as set forth in § 273.22.

(c) *Boarders.* (1) Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals. Boarders are ineligible to participate in the Program independent of the household providing the board. They may participate as members of the household providing the boarder services to them, at such household's request. In no event shall boarder status be granted to those individuals or groups of individuals described in paragraph (a)(3) of this section.

(2) The household within which a boarder resides (including the household of the proprietor of a boarding house) may participate in the program if the household meets all the eligibility requirements for program participation.

(3) To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals shall be used, provided that the amount paid for meals is distinguishable from the amount paid for lodging. A reasonable monthly payment shall be either of the following:

(i) Boarders whose board arrangement is for more than two meals a day shall pay an amount which equals or exceeds the Thrifty Food Plan for the appropriate size of the boarder household; or

(ii) Boarders whose board arrangement is for two meals or less per day shall pay an amount which equals or exceeds two-thirds of the Thrifty Food Plan for the appropriate size of the boarder household.

(4) An individual furnished both meals and lodging by a household but paying compensation of less than a reasonable amount to the household for such services shall be considered a member of the household providing the services.

(5) None of the income or resources of individuals determined to be boarders and who are not members of the household providing the boarder services (as prescribed in paragraph (c)(3) of this section) shall be considered available to such household. However, the amount of the payment that a boarder gives to a household shall be treated as self-employment income to the household. The procedures for handling self-employment income from boarders (other than such income received by a household that owns and operates a commerical boarding house) are set forth in § 273.11(b). The procedures for handling income from boarders by a household that owns and operates a commerical boarding household are set forth in § 273.11(a). For Program purposes, a commerical boarding house is defined as an establishment licensed as an enterprise which offers meals and lodging for compensation. In project areas without licensing requirements, a commerical boarding house shall be defined as a commerical establishment which offers meals and lodging for compensation with the

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intent of making a profit. The number of boarders residing in a boarding house shall not be used to determine if a boarding house is a commerical enterprise.

(d) *Head of household.* State agencies may designate the head of household or permit the household to do so. State agencies shall not use the head of household classification to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits.

(e) *Residents of institutions.* Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50% of three meals daily) as part of the institution's normal services and the institution has not been authorized to accept coupons. Residents of institutions are not eligible for participation in the program with the following exceptions:

(1) Residents of federally subsidized housing for the elderly, built under either section 202 of the Housing Act of 1959 or section 236 of the National Housing Act.

(2) Narcotic addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, reside at a facility or treatment center.

(3) Disabled or blind individuals who are residents of group living arrangements (as defined in § 271.2) and who receive benefits under Title II or Title XVI of the Social Security Act.

(4) Women or women with their children temporarily residing in a shelter for battered women and children as defined in § 271.2. Such persons temporarily residing in shelters for battered women and children shall be considered individual household units for the purposes of applying for and participating in the Program.

(f) *Authorized representatives.* (1) The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for the program.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. In conjunction with these provisions, another household member, or the household's authorized representative, may complete work registration forms for those household members required to register for work. The State agency shall inform the household that the household will be held liable for any over issuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e) and § 273.16(a). Adults who are non-household members may be designated as authorized representatives for certification purposes only under the following conditions:

(A) The authorized representative has been designated in writing by the head of the household, or the spouse, or another responsible member of the household; and

(B) The authorized representative is an adult who is sufficiently aware of relevant household circumstances.

(ii) *Obtaining the coupons.* An authorized representative may be designated to obtain coupons. These designations shall be made at the time the application is completed and any authorized representative shall be named on the ID card. The authorized representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain coupons, the household should be encouraged to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain coupons. The household may also designate an emergency authorized representative at a later date. An emergency authorized representative is someone who obtains coupons when neither a household member nor the authorized representative is able to obtain them because of unforeseen circumstances. State agencies shall provide for a system, which meets the requirements of § 274.2(e), to permit the designation, in writing, of an emergency authorized representative to obtain coupons with a particular ATP.

(iii) *Using the coupons.* The authorized representative may use coupons to purchase food for the household's consumption, with the full knowledge and consent of the household, provided the authorized representative has the household's ID card.

(2) *Drug addict/alcoholic treatment centers and group homes as authorized representatives.* Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program (as defined in § 271.2) on a resident basis and disabled or blind residents of group living arrangements (as defined in § 271.2) who receive benefits under Title II or Title XVI of the Social Security Act may elect to participate in the Food Stamp Program.

(i) The residents of drug or alcoholic treatment centers shall apply and be certified for program participation through the use of an authorized representative who shall be an employee of and designated by the private nonprofit organization or institution that is administering the treatment and rehabilitation program. The center shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic and shall be responsible for complying with the requirements set forth in § 273.11(e).

(ii) Residents of group living arrangements shall either apply and be certified through use of an authorized representative employed and designated by the group living arrangement or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for food stamps on his/her own behalf; the determination should be based on the resident's physical and mental ability to handle his/her own affairs. The group living arrangement is encouraged to consult with any other agencies of the State providing other services to individual residents prior to a determination. All of the residents of the group living arrangement do not have to be certified either through an authorized representative or individually in order for one or the other method to be used. Applications shall be accepted for any individual applying as a one-person household or for any grouping of residents applying as a household as defined in § 273.1. If the resident applies through the facility as the authorized representative, the group living arrangement may either receive and spend the coupon allotment for food prepared by and/or served to the eligible resident or allow the eligible resident to use all or any portion of the allotment on his/her own behalf. If the residents are certified on their own behalf, the coupon allotment may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and/or to purchase meals prepared and served by the group living arrangement. In any case, the group living arrangement is responsible for complying with the requirements set forth in § 273.11(f). If the group living arrangement has its status as an authorized representative suspended by FNS (as discussed in § 273.2(f)(6)), residents applying on their own behalf shall still be able to participate if otherwise eligible.

(3) In the event the only adult living with a household is classified as a nonhousehold member as defined in paragraph (b) of this section, that individual may be the authorized representative for the minor household members.

(4) The following restrictions apply to authorized representatives: (i) State agency employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons may not act as authorized representatives without the specific written approval of the designated State agency official and only if that official determines that no

one else is available to serve as an authorized representative.

(ii) Individuals disqualified for fraud shall not act as authorized representatives during the period of disqualification, unless the individual disqualified is the only adult member of the household able to act on its behalf and the State agency has determined that no one else is available to serve as an authorized representative. The State agency shall separately determine whether these individuals are needed to apply on behalf of the household, to obtain coupons, and to use the coupons for food for the household. For example, the household may have an authorized representative to obtain its coupons each month, but not be able to find anyone to purchase food regularly with the coupons. If the State agency also is unable to find anyone to serve as an authorized representative to purchase food regularly with the coupons, the disqualified member shall be allowed to do so.

(iii) The State agency shall insure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of ATP's or coupons, the State agency should exercise caution to assure that: The household has freely requested the assistance of the authorized representative; the household's circumstances are correctly represented and the household is receiving the correct amount of benefits; and that the authorized representative is properly using the coupons. State agencies which have obtained evidence that an authorized representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of coupons, may disqualify that authorized representative from participating as an authorized representative in the Food Stamp Program for up to one year. The State agency shall send written notification to the affected household(s) and the authorized representative thirty days prior to the date of disqualification. The notification shall include: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the office; and, if possible, the name of the person to contact for additional information. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes which act as authorized representatives for their residents.

(g) *Strikers.* (1) Households with striking members shall be ineligible to participate in the Food Stamp Program unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. However, such a household shall not receive an increased allotment as the result of a decrease in the income of the striking member(s) of the household.

(2) For food stamp purposes, a striker shall be anyone involved in a strike or concerted stoppage of work by emloyees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker. Examples of non-strikers who are eligible for participation in the program include but are not limited to:

(i) Employees whose workplace is closed by an employer in order to resist demands of employees (e.g., a lockout);

(ii) Employees unable to work as a result of striking employees (e.g., truckdrivers who are not working because striking newspaper pressmen prevent newspapers from being printed); and,

(iii) Employees who are not part of the bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death.

(3) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(4) Eligibility at time of application shall be determined by comparing the striking member's income before the strike (as calculated for paragraph (g)(3) of this section) to the striker's current income and adding the higher of the two to the current income of nonstriking members during the month of application. To determine benefits (and eligibility for households subject to the net income eligibility standard), deduction shall be calculated for the month of application as for any other household. Whether the striker's pre-strike earnings are used or his current income is used, the earnings deduction shall be allowed if appropriate.

(5) Strikers whose households are eligible to participate under the criteria in § 273.1(g) shall be subject to the work registration requirements under § 273.7 unless exempt under § 273.7(b) the day of application.

(Sec. 101, Pub. L. 96-249, 94 Stat. 357 (7 U.S.C. 2012 and 2019); 91 Stat. 958 (7 U.S.C. 2011-2029); sec. 1, Pub. L. 97-98, 95 Stat. 1282 (7 U.S.C. 2012); 91 Stat. 958 (7 U.S.C. 2011-2029); secs. 172 and 174, Pub. L. 97-253; 96 Stat. 780 (7 U.S.C. 2020); secs. 112, 113 and 114 of Pub. L. 97-35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97-253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.2 Application processing.

(a) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. Expedited service shall be available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) *Food stamp application form.* All State agencies shall use an application form designed by FNS. FNS may approve a deviation from that form to accommodate the use of a combined PA/food stamp application form, the requirements of a computer system, or other exigencies for which the State agency can submit adequate justification, provided the form is understandable to applicants and easy to complete. Each application form shall contain, in prominent and boldface lettering and understandable terms, (1) a statement that the information provided by the applicant in connection with the application for a coupon allotment will be subject to verification by Federal, State, and local officials to determine if such information is factual and that if any material part of such information is incorrect, food stamps may be denied to the applicant, and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information, and (2) a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act.

(c) *Filing an application*—(1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative or by mail. The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application. Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative. State agencies shall document the date the application was filed by recording on the application the date it was received by the food stamp office.

(2) *Contacting the food stamp office.* (i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting the requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day.

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households and those groups and organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form.

(4) *Notice of right to file.* The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing in outreach materials and on the application form.

(5) *Withdrawing application.* The household may voluntarily withdraw its application at any time prior to the determination of eligibility. The State agency shall document in the case file the reason for withdrawal, if any was stated by the household, and that contact was made with the household to confirm the withdrawal. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency.

(2) In addition, the household shall be determined ineligible if it refuses to

cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.12(g)(1)(ii), the household may reapply but shall not be determined eligible until it cooperates with the quality control reviewer. If a household reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a quality control reviewer during the completed review period, but must provide verification of all eligibility requirements prior to being determined eligible.

(e) *Interviews.* (1) All applicant households, including those submitting applications by mail, shall have face-to-face interviews in a food stamp office or other certification site with a qualified eligibility worker prior to initial certification and all recertifications. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer shall not simply review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(2) The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because they are 65 years of age or older, or are mentally or physically handicapped. The office interview shall also be waived if requested by any household which is unable to appoint an authorized representative and lives in a location which is not served by a certification office. The State agency shall waive the office interview on a case-by-case basis for any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because of transportation difficulties or similar hardships which the State agency determines warrants a waiver of the office interview. These hardship conditions include, but are not limited to: Illness, care of a household member, prolonged severe weather, or work hours which preclude in-office interview. The State agency shall determine if the transportation difficulty or hardship reported by a household warrants a waiver of the office interview and shall document in the case file why a request for a waiver was granted or denied.

(i) The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. Home visits shall be used only if the time of the visit is scheduled in advance with the household.

(ii) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where documentary verification would normally be provided.

(iii) Waiver of the face-to-face interview shall not affect the length of the household's certification period.

(3) The State agency shall schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. If a household fails to appear for the first interview, the State agency shall attempt to schedule another interview. The interview shall be rescheduled by the State agency without requiring the household to provide good cause for failing to appear. However, if the household does not appear for the rescheduled interview, the State agency need not initiate action to schedule

any further interviews unless the household requests that another interview be scheduled.

(f) *Verification.* Verification is the use of third-party information or documentation to establish the accuracy of statements on the application.

(1) *Mandatory verification.* State agencies shall verify the following information prior to certification for households initially applying:

(i) *Gross nonexempt income.* Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Alien status.* (A) Based on the application, the State agency shall determine if members identified as aliens are eligible aliens, as defined in § 273.4(a) (2) through (8), by requiring that the household present verification for each alien member.

(B) Aliens in the categories specified in § 273.4(a) (2) and (3) shall present an Immigration and Naturalization Service (INS) form I-151 or I-551—"Alien Registration Receipt Card"; or the "Re-entry Permit," a passport booklet for lawful permanent residents aliens. Because delays in delivering the I-551 cards are lengthy, an interim document provided to new immigrants, Form I-181-B, may be presented. This form is given at the time of adjustment of status to lawful permanent residence. It is imprinted with the stamped annotation, "Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence."

(C) Aliens in the categories specified in § 273.4(a)(4) through (a)(8) shall present an INS form I-94: *Arrival-Departure Record.* The State agency shall accept the INS form I-94 as verification of eligible alien status only if the form is annotated with section 203(a)(7), 207, 208, 212(d)(5) or 243(h) of the Immigration and Nationality Act or if the form is annotated with any one of the following terms or a combination of the following terms: Refugee, parolee, paroled, or asylum. However, an INS Form I-94 annotated with section 203(a)(7) of the Immigration and Nationality Act must have been issued prior to April 1, 1980 to be considered as acceptable verification. An INS form I-94 annotated with any one of the letters (A) through (L) shall be considered verification of ineligible alien status unless the alien can provide other documentation from INS which indicates that the alien is eligible. If the INS form I-94 does not bear any of the above annotations and the alien has no other verification of alien classification in his or her possession, the State agency shall advise the alien to submit form G-641, *Application for Verification of Information from Immigration and Naturalization Service Records,* to INS. State agencies shall accept this form when presented by the alien and properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons. The alien shall also be advised that classification under section 203(a)(7), 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status; that the alien may be eligible if acceptable verification is obtained; and that the alien may contact INS, as stated previously, or otherwise obtain the necessary verification or, if the alien wishes and signs a written consent, that the State agency will contact INS to obtain clarification of the alien's status. If the alien does not wish to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

(D) If an alien is unable to provide any INS document at all (not even an INS form I-94), then the State agency has no responsibility to offer to contact INS on the alien's behalf. The State agency's responsibility exists only when the alien has an INS document that does not clearly indicate eligible or ineligible alien status. In any event, the State agency shall not contact INS to obtain information about the alien's correct status without the alien's written consent.

(E) If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The State agency shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to section 101(a)(15), 101(a)(20), 203(a)(7), 207, 208, 212(d)(5), 243, or 249 of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act.

(F) While awaiting acceptable verification, the alien whose status is questionable shall be ineligible. The income and resources of the ineligible alien shall be treated in the same manner as a disqualified individual set forth in § 273.11(c), and shall be considered available in determining the eligibility of any remaining members.

(iii) *Utility expenses.* The State agency shall verify a household's utility expenses if the household wishes to claim expenses in excess of the State agency's utility standard and the expense would actually result in a deduction. If the household's actual utility expenses cannot be verified before the 30 days allowed to process the application expire, the State agency shall use the standard utility allowance, provided the household is entitled to use the standard as specified in § 273.9(d). If the household wishes to claim expenses for an unoccupied home, the State agency shall verify the household's actual utility expenses for the unoccupied home in every case and shall not use the standard utility allowance.

(iv) *Medical expenses.* The amount of any medical expenses (including the amount of reimbursements) deductible under § 273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable.

(v) *Social Security Numbers.* The Social Security Number(s) (SSN) reported to the State agency by the household shall be verified by the State agency. However, the State agency shall not delay certification of an otherwise eligible household solely to validate any member's SSN, even if the 30 day processing period has not expired. As soon as all other steps necessary to certify a household are completed except for verification of an SSN, the State agency shall certify the household. If verification of an already reported SSN is not completed at inital certification, it shall be completed at the time of or prior to the household's next recertification. The SSN shall be verified in one of the following ways:

(A) Matching the reported SSN with information supplied by the Social Security Administration (SSA) such as BENDEX or SDX computer tapes or printouts;

(B) Observing the household member's social security card or any official document containing the SSN. If the individual has no social security card or other official document containing the SSN or the social security number appears questionable, the State agency shall verify the number either by matching it with SSA tapes or submitting or having the individual submit Form SS-5, Application for a Social Security Number, to the Social Security Administration. In the latter case, the State agency shall advise the individuals where to file and discuss with them what evidence will be needed. Once an SSN has been verified, the State shall annotate its file accordingly to prevent the need for reverification in the future. State agencies shall accept as verified an SSN which has already been verified through the Aid to Familes with Dependent Children program, Medicaid, or other similar programs. A verified SSN shall be reverified if the identity of the individual or the SSN becomes questionable.

(vi) *Residency.* The residency requirements of § 273.3 shall be verified, except in unusual cases (such as some migrant farmworker households or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

(vii) *Identity.* The identity of the person making application shall be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. Identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, a driver's license, a work or school ID, an ID for health benefits or for another assistance or social services program, a voter registration card, wage stubs, or a birth certificate. Any documents which reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(2) *Verification of questionable information.* The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision. Procedures described below shall apply when information concerning one of the following eligibility requirements is questionable.

(i) *Household composition.* States agencies shall verify factors affecting the composition of a household, if questionable. Individuals who wish to be a separate household from those with whom they reside shall be responsible for proving a claim that they are a separate household to the satisfaction of the State agency. Individuals described in § 273.1(a)(1)(iv), who wish to be a separate household, shall also be responsible for obtaining the cooperation of the individuals with whom they reside in providing necessary income information to the State agency, and for providing (at State agency request) a physician's statement that they cannot purchase and prepare their own meals. For any household member claiming a permanent disability that is questionable (not apparent) to the State agency, under clause (5) of the definition of "elderly or disabled member" in § 271.2, the household shall provide (at State agency request) a statement from a physician or licensed or certified psychologist to assist the State agency in making a disability determination.

(ii) *Citizenship.* (A) When a household's statement that one or more of its members are U.S. citizens is questionable, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS Form I-179 or INS Form I-197) or U.S. passports. Participation in the AFDC program shall also be considered acceptable verification if verification of citizenship was obtained for that household. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, the State agency shall accept a signed statement from someone who is a U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen. The signed statement shall contain a warning of the penalties for helping someone commit fraud, such as: If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both.

(B) The member whose citizenship is in question shall be ineligible to participate until proof of U.S. citizenship is obtained. Until proof of U.S. citizenship is obtained, the member whose citizenship is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in § 273.11(c).

(3) *State agency options.* (i) In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any of the other factors which affect household eligibility or allotment level. Such verification may be required State-wide or project areawide, but shall not be imposed on a selective, case-by-case basis on particular households.

(A) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, including verification resulting from a State's error-prone profile, shall not apply in those offices of the Social Security Administration (SSA) which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(B) If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(ii) *Error-prone profiles.* The State agency may require additional verification of other eligibility factors as indicated by error-prone household profiles developed and based on statistically representative data derived from the State agency's quality control review, audits, or other special reviews in accordance with § 275.15(a)(2). These expanded verification requirements would be applied only to those particular eligibility factors and/or households identified as being error-prone, and would apply only on a uniform basis statewide or in one or more project areas. In addition, if the State agency's error-prone household profiles demonstrate that verification of particular eligibility factors (other than gross nonexempt income, declared alien status, and social security numbers) mandated under § 273.2(f)(1) is not needed for particular categories of households, the State agency may appropriately reduce mandatory verification. The State agency shall not implement verification policies that result in prohibited discrimination based on race, religion, ethnic group, or national origin. For example, an error-prone profile may not be used to target particular racial minorities, or groups such as migrant farmworkers or American Indians, to more intensive verification than other households. Error-prone profiles shall be used in a selective manner in modifying verification requirements.

(4) *Sources of verification*—(i) *Documentary evidence.* State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified.

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification. If the State agency designates a collateral contact, the State agency shall not make the contact without providing prior written or oral notice to the household. At the time of this notice, the State agency shall inform the household that it has the following options:

(A) Consent to the contact, (B) provide acceptable verification in another form, or (C) withdraw its application. If the household refuses to choose one of these options, its application shall be denied in accordance with the normal procedures for failure to verify information under paragraph (g)(3) of this section. Systems of records to which the State agency has routine access are not considered collateral contacts and, therefore, need not be designated by the household. Examples are the Beneficiary Data Exchange (BENDEX), the State Data Exchange (SDX) and records of another agency where a routine access agreement exists (such as records from the State's unemployment compensation system).

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household.

(iv) *Discrepancies.* Where information from another source contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to an eligibility determination.

(5) *Responsibility for obtaining verification.* (i) The household has primary responsibility for providing doc-

umentary evidence to support its income statement and to resolve any questionable information. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. If it would be difficult or impossible for the household to obtain the documentary evidence in a timely manner or the household has presented insufficient documentation, the State agency shall either offer assistance to the household in obtaining the documentary evidence, except as otherwise stated in this section, or shall use a collateral contact or home visit. The State agency shall not require the household to present verification in person at the food stamp office.

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact, or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(7) *State Data Exchange and Beneficiary Data Exchange.* The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

(8) *Verification subsequent to initial certification*—(i) *Recertification.* (A) At recertification the State agency shall verify a change in income, medical expenses, or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25 since the last verification was accomplished. State agencies may verify income, medical expenses or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section.

(B) Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

(C) Other information, changed or unchanged, may be verified at recertification. However, any information which is questionable shall be verified in accordance with paragraph (f)(2) of this section. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency is not required to verify income, medical expenses or actual utility expenses if the source has not changed and the amount has changed by $25 or less since the last time they were verified.

(9) *Access to wage information.* (i) The State agency shall request wage information available from the Social Security Administration (SSA) under provisions of section 6103(1)(7) of the Internal Revenue Code of 1954 and/or from agencies administering State unemployment compensation (UC) laws under provisions of section 303(d) of the Social Security Act. State agencies are not required to request wage information from SSA if such information is available from agencies administering UC laws. At a minimum, State agencies shall either (A) request wage data at time periods consistent with the AFDC requirements in 45 CFR 205.56 or, (B) if UC data is used, at certification and recertification and, (C) if SSA data is used, on a one time basis initially and then as additions and deletions occur, and provided that SSA updates information as new information is posted to SSA files. The State agency shall submit additions and deletions to SSA no less frequently than semiannually.

(ii) Information on earnings and benefits disclosed by SSA or UC agencies shall be used only for the purposes of:

(A) Verifying a household's eligibility;

(B) Verifying the proper amount of benefits;

(C) Investigating to determine whether participating households received benefits to which they were not entitled; and

(D) Substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(iii) State agencies shall develop follow-up procedures and corrective action requirements, including timeframes within which action should be taken, to be applied to data obtained from wage matching. Follow-up actions shall include, but not be limited to, the adjustment of benefits and eligibility, and the filing of claims, as appropriate.

(iv) FNS reserves the right to review State agencies' use of data obtained from wage matching and may require State agencies to take additional specific action to ensure that such data is being used to protect Program integrity.

(v) Prior to accessing wage information from SSA and/or UC agencies, State agencies shall execute data exchange agreements with the respective agency, detailing the procedures to be used in requesting and providing wage information. These agreements shall include, at a minimum, the following:

(A) Identification of all agency officials with authority to request wage information;

(B) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested wage information; and

(C) Safeguards limiting release or redisclosure as required by Federal or State law or regulation. The agreement with SSA shall assure compliance with the safeguard, reporting, and other requirements contained in sections 6103 and 7213 of the Internal Revenue Code as implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines.* The agreements with UC agencies shall assure compliance with all safeguard requirements set by the Department of Labor.

(vi) The State agency may access data for wage matching without release statements from households, provided the State agency makes the appropriate data request to SSA and/or the UC agency, and executes the necessary data exchange agreements. The household shall be given an opportunity to verify information from another source if the data obtained from wage matching is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SSA, UC or State wage data is unavailable.

(g) *Normal processing standard*—(1) *Thirty-day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the application was filed. An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative. Households entitled to expedited processing are specified in paragraph (i) of this section.

(2) *Opportunity to participate.* An opportunity to participate consists of providing households with an ATP or other authorization and having an issuance facility open and available for the household to obtain its allotment. If the ATP or coupons are mailed, 2 days shall be allowed for delivery before determining if the household has been provided an opportunity to participate. A household has not been provided an opportunity to participate within the 30-day standard if the ATP or allotment is mailed on the 29th or 30th day. Neither has an opportunity to participate been provided if the ATP is mailed on the 28th day but no issuance facility is open on the 30th day. The State agency must mail the ATP at least 2 days in advance of the 30th day and assure that the ATP can be transacted after it is received but before the 30-day standard expires.

(3) *Denying the application.* Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the State agency to express interest in pursuing the application, the State agency shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. In cases where the State agency was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the State agency may also deny the application on the 30th day if the State agency provided assistance to the household in obtaining verification when required, as specified in paragraph (f)(5) of this section, but the household failed to provide the requested verification.

(h) *Delays in processing.* If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall take the following action:

(1) *Determining cause.* The State agency shall first determine the cause of the delay using the following criteria: (i) A delay shall be considered the fault of the household if the household has failed to complete the application process even though the State agency has taken all the action it is required to take to assist the household. The State agency must have taken the following actions before a delay can be considered the fault of the household:

(A) For households that have failed to complete the application form, the State agency must have offered, or attempted to offer, assistance in its completion.

(B) If one or more members of the household have failed to register for work, as required in § 273.7, the State agency must have informed the household of the need to register for work and given the household at least 10 days from the date of notification to register these members.

(C) In cases where verification is incomplete, the State agency must have provided assistance when required, as specified in paragraph (f)(5) of this section, and allowed the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

(D) For households that have failed to appear for an interview, the State agency must have attempted to reschedule the initial interview within 30 days following the date the application was filed. However, if the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

(ii) Delays that are the fault of the State agency include, but are not limited to, those cases where the State agency failed to take the actions described in paragraphs (h)(1)(i) (A) through (D) of this section.

(2) *Delays caused by the household.* (i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(A) The State agency has the option of sending the household either a notice of denial or a notice of pending status on the 30th day. The option chosen may vary from one project area to another, provided the same procedures apply to all households within a project area. However, if a notice of denial is sent and the household takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household failed to take the required action within 60 days following the date the application was filed, or if the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing, and the household fails to provide the necessary verification by this 30th day.

(B) State agencies may include in the notice a request that the household report all changes in circumstances since it filed its application. The information that must be contained on the notice of denial or pending status is explained in § 273.10(g)(1) (ii) and (iii).

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(3) *Delays caused by the State agency.* (i) Whenever a delay in the initial 30-day period is the fault of the State agency, the State agency shall take immediate corrective action. The State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process. If verification is lacking the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(ii) If the household is found to be eligible during the second 30-day period, the household shall be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, the State agency shall deny the application.

(4) *Delays beyond 60 days.* (i) If the State agency is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and the State agency was at fault for the delay in the initial 30 days, the household shall receive benefits retroactive to the month of application. However, if the initial delay was the household's fault, the household shall receive benefits retroactive only to the month following the month of application. The State agency may use the original application to determine the household's eligibility in the months following the 60-day period, or it may require the household to file a new application.

(ii) If the State agency is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, the State agency may continue to process the original application, or deny the case and notify the household to file a new application. If the case is denied, the household shall also be advised of its possible entitlement to benefits lost as a result of State agency caused delays in accordance with § 273.17. If the State agency was also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

(iii) If the household is at fault for not completing the application process by the end of the second 30-day period, the State agency shall deny the application and require the household to file a new application if it wishes to participate. If however, the State agency has chosen the option of holding the application pending only until 30 days following the date of the initial request for the particular verification that was missing, and verification is not received by that 30th day, the State agency may immediately close the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household shall not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of the State agency.

(i) *Expedited service*—(1) *Entitlement to expedited service.* The following households are entitled to expedited service provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100:

(i) Households with less than $150 in monthly gross income, as computed in § 273.10; or,

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3).

(2) *Identifying households needing expedited service.* The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.

(3) *Processing standards.* All households receiving expedited service, except those receiving it during months in which allotments are suspended or cancelled, shall have their cases processed in accordance with the following provisions. Those households receiving expedited service during suspensions or cancellations shall have their cases processed in accordance with the provisions of § 271.7(e)(2).

(i) *Zero net income and destitute households.* For households entitled to expedited service, except as specified in paragraphs (i)(3) (ii) through (iii) of this section, the State agency shall mail or have available for pickup the household's ATP or coupons no later than the close of business on the fifth calendar day following the day the application was filed.

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall mail an ATP or coupons or have the ATP or coupons available for pick-up no later than seven working days following the date the application was filed.

(iii) *Out-of-office interviews.* If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing. If the State agency conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be calculated in the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.

(iv) *Late determinations.* If the prescreening required in paragraph (i)(2) of this section fails to identify a household as being entitled to expedited service and the State agency subsequently discovers that the household is entitled to expedited service, the State agency shall provide expedited service to households within the processing standards described in paragraphs (i)(3) (i) and (ii) of this section, except that the processing standard shall be calculated from the date the State agency discovers the household is entitled to expedited service.

(v) *Residents of shelters for battered women and children.* Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled in accordance with the time limits in paragraph (i)(3)(i) of this section.

(4) *Special procedures for expediting service.* The State agency shall use the following procedures when expediting certification and issuance:

(i) In order to expedite the certification process, the State agency shall use the following procedures:

(A) In all cases, the applicant's identity (i.e., the identity of the person making the application) shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section.

(B) All reasonable efforts shall be made to verify within the expedited processing standards, the household's residency, income statement (including a statement that the household has no income), liquid resources and all other factors required by § 273.2(f), through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because these eligibility factors have not been verified. State agencies also may verify factors other than identity, residency, and income provided that verification can be accomplished within expedited processing standards. State agencies should attempt to obtain as much additional verification as possible during the interview, but should not delay the certification of households entitled to expedited service for the full timeframes specified in paragraph (i)(3) of this section when the State agency has determined it is unlikely that other verification can be obtained within these timeframes. Households entitled to expedited service will be asked to furnish a social security number for each person or apply for one for each person before the first full month of participation. Those households unable to provide the required SSN's or who do not have one prior to their next issuance shall be allowed 30 days from the first day of the first full month of participation to obtain the SSN, in accordance with § 273.6(a). The State agency may attempt to register other household members but shall postpone the registration of other household members if it cannot be accomplished within the expedited service timeframes. With regard to the work registration requirements specified in § 273.7, the State agency shall, at a minimum, require the applicant to register (unless exempt or unless the household has designated an authorized representative to apply on its behalf in accordance with § 273.1(f)). The State agency may attempt registration of other household members by requesting that the applicant complete the work registration forms for other household members to the best of his or her ability. The State agency may also attempt to accomplish work registration for other household members in a timely manner through other means, such as calling the household. The State agency may attempt to verify questionable work registration exemptions, but such verification shall be postponed if the expedited service timeframes cannot be met.

(ii) Once an acceptable collateral contact has been designated, the State agency shall promptly contact the collateral contact, in accordance with the provisions of paragraph (f)(4)(ii) of this section. Although the household has the primary responsibility for providing other types of verification, the State agency shall assist the household in promptly obtaining the necessary verification.

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned normal certification periods. If verification was postponed, the State agency may certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the State agency's option, may assign normal certification periods to those households whose circumstances would otherwise warrant longer certification periods. State agencies, at their option, may request any household eligible for expedited service which applies after the 15th of the month to submit a second application (at the time of the initial certification) if the household's verification is postponed.

(A) When certified only for the month of application, households must reapply and complete the verification which was postponed, unless they have been certified under normal processing standards since the last expedited certification.

(B) Except with regard to migrant households applying after the 15th of a month, when a certification period of longer than one month is assigned, the State agency shall notify the household in writing that no further benefits will be issued until the postponed verification is completed. Migrant households eligible for expedited service and applying after the 15th of a month and which are assigned certification periods of longer than one month, shall be notified in writing that they shall provide postponed verification from sources within the State before a second month's benefits are issued and shall provide all verification from out-of-State sources before being issued benefits for the third month. The notice shall also advise the household that if verification results in changes in the household's eligibility or level of benefits, the State agency shall act on those changes without advance notice of adverse action. Migrants shall be entitled to postpone out-of-State verification only once each season. If a migrant household requesting expedited service has already received this exception during the current season, the State agency shall grant a postponement of out-of-State verification only for the initial month's issuance and not for the second month's issuance. When households which applied for benefits after the 15th of the month provide the required postponed verification, the State agency shall issue the second month's benefits within five working days from receipt of the verification or the first of the second month, whichever is later. If the State agency chooses to exercise the option to require a second application in accordance with § 273.2(i)(4)(iii), it shall issue the second month's benefits within five working days from receipt of the necessary verification. Except for migrant households needing out-of-State verification, when the postponed verification is not completed within 30 days of the date of application, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification, the household either completes the verification requirements that were postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification.

(v) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) *PA and GA households.* Households in which all members are applying for public assistance (PA) shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. These households' food stamp eligibility and benefit levels shall be based solely on food stamp eligibility criteria, and the households shall be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations. Households in which all members are applying for State agency administered general assistance (GA) shall, at a minimum, be provided with applications for food stamp benefits and be referred to the appropriate food stamp office for an eligibility determination. Under certain circumstances, these households may be able to apply jointly for their GA and food stamp benefits.

(1) *PA households.* (i) State agencies, at their discretion, may permit households applying for PA and food stamps at the same time to complete a joint application for both programs, or separate applications for both programs or an application for PA with an addendum to collect information relevant only to food stamps. If the State agency elects to use a joint PA/food stamp application, the application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of either program for false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(v) of this section. The joint PA/food stamp application may be used for all food stamp applicants provided the application form is approved for all households by FNS.

(ii) The State agency shall conduct a single interview at initial application for both public assistance and food stamp purposes. PA households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and public assistance. A household's eligibility for food stamp out-of-office interview provisions in § 273.2(e)(2) does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both public assistance and food stamps, the verification procedures described in paragraphs (f)(1) through (f)(8) of this section shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, the State agency shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the State agency has sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section but does not have sufficient verification to meet the PA verification rules.

(iv) As a result of differences in PA and food stamp application processing procedures and timeliness standards, the State agency may have to determine food stamp eligibility prior to determining the household's eligibility for PA payments. Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that the PA determination has not been made. If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced or terminated when the grant is received. Households who file joint applications for food stamps and PA and whose PA applications are subsequently denied may be required to file new food stamp applications or may have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(2) *GA households.* (i) State agencies shall use the joint application processing procedures in paragraph (j)(1) of this section for GA households when the following criteria are met:

(A) The State agency administers a GA program which uses formalized application procedures and eligibility criteria that test levels of income and resources; and,

(B) Administration of the GA program is integrated with the administration of the PA or food stamp programs, in that the same eligibility workers process applications for GA benefits and PA or food stamp benefits.

(ii) State agencies that have not integrated the administration of their GA program, but otherwise meet the criteria in paragraph (j)(2)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section.

(iii) State agencies that have not integrated the administration of their GA program, and that do not elect or are not approved to use the joint application processing procedures, shall, at a minimum, advise all GA applicant households of their potential eligibility for food stamp benefits and provide these households with food stamp applications. In addition, State agencies shall allow households in which all members are applying for GA benefits to leave a signed food stamp application which contains, at a minimum, the household's name and address, at the GA office. The GA office shall forward these applications that same day to the appropriate food stamp office for processing. The procedural and timeliness requirements that apply to the application process shall begin when the food stamp office receives the application. Since there may be delay involved in the transferring of applications from GA offices to food stamp offices, households shall be advised that they may receive faster service if they take the application directly to the food stamp office.

(iv) In areas where GA programs are administered by local agencies or agencies such as the Department of the Interior's Bureau of Indian Affairs, the State agency shall endeavor to gain their cooperation in referring GA applicants to the food stamp program. Where possible, this referral should consist of informing the GA applicants of their potential eligibility for food stamp benefits, providing them with food stamp applications and directing them to the local food stamp office.

(3) *Households with some PA or GA recipients.* State agencies that use the joint application processing procedures in paragraphs (j)(1) and (j)(2) of this section may apply these procedures to a food stamp applicant household in which some, but not all, members are in the PA/GA filing unit. If the State agency decides not to use the joint application procedures for these households, the households shall file separate applications for PA/GA and food stamp benefits. This decision shall not be made on a case-by-case basis, but shall be applied uniformly to all households of this type in a project area.

(k) *SSI households.* For purposes of this paragraph, SSI is defined as Federal SSI payments made under Title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616 of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Pub. L. 93-66. Except in cashout States (§ 273.20), households which have not applied for food stamps in the thirty preceding days, and which do not have applications pending, may apply and be certified for food stamp benefits in accordance with the procedures described in § 273.2(k)(1)(i) or § 273.2(k)(1)(ii) and with the notice, procedural and timeliness requirements of the Food Stamp Act of 1977 and its implementing regulations. These household's food stamp eligibility and benefit levels shall be based solely on food stamp eligibility criteria. The State agency shall make an eligibility determination based on information provided by SSA or by the household.

(1) *Initial application and eligibility determination.* At each SSA office, the State agency shall either arrange for SSA to complete and forward food stamp applications, or the State agency shall outstation State food stamp eligibility workers at the SSA Offices with SSA's concurrence, based upon an agreement negotiated between the State agency and the SSA.

(i) If the State agency arranges with the SSA to complete and forward food stamp applications the following actions shall be taken:

(A) Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the SSA shall inform the household of:

(*1*) Its right to apply for food stamps at the SSA office without going to the food stamp office; and

(*2*) Its right to apply at a food stamp office if it chooses to do so.

(B) The SSA will accept and complete food stamp applications received at the SSA Office from SSI households and forward them, within one working day after receipt of a signed application, to a designated office of the State agency. SSA shall also forward to the State agency a transmittal form which will be approved by SSA and FNS. The SSA will use the national food stamp application form for joint processing. State agencies may substitute a State food stamp application, provided that prior approval is received from both FNS and SSA. SSA shall approve, deny, or comment upon FNS-approved State food stamp applications within thirty days of their submission to SSA.

(C) SSA will accept and complete food stamp applications from SSI households received by SSA staff in contact stations. SSA will forward all food stamp applications from SSI households to the designated food stamp office.

(D) The State agency shall designate an address for the SSA to forward food stamp applications and accompanying information to the State agency for eligibility determination. Applications and accompanying information must be forwarded to the agreed upon address in accordance with the time standards contained in § 273.2(k)(1)(i)(B).

(E) The State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA. The expedited processing time standards shall begin on the date the State agency receives a food stamp application. Food stamp applications and supporting documentation sent to an incorrect food stamp office shall be sent to the correct office, by the State agency, within one working day of their receipt in accordance with § 273.2(c)(2)(ii).

(F) Households in which all members are applying for or participating in SSI will not be required to see a State eligibility worker, or otherwise be subjected to an additional State interview. The food stamp application will be processed by the State agency. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits unless: the application is improperly completed; mandatory verification required by § 273.2(f)(1) is missing; or, the State agency determines that certain information on the application is questionable. In no event would the applicant be required to appear at the food stamp office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall not constitute a second food stamp certification interview.

(G) The SSA shall refer non-SSI households and those in which not all members have applied for or receive SSI to the correct food stamp office. The State agencies shall process those applications in accordance with the procedures noted in § 273.2. Applications from such households shall be considered filed on the date the signed application is taken at the correct State agency office, and the normal and expedited processing time standards shall begin on that date.

(H) The SSA shall prescreen all applications for entitlement to expedited services on the day the application is received at the SSA office and shall mark "Expedited Processing" on the first page of all households' applications that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benfits may be issued a few days sooner if the household applies directly at the food stamp office. The household may take the application from SSA to the food stamp office for screening, an interview, and processing of the application.

(I) The State agency shall prescreen all applications received from the SSA for entitlement to expedited service on the day the application is received at the correct food stamp office. All SSI households entitled to expedited service shall be certified in accordance with § 273.2(i) except that the expedited processing time standard shall begin on the date the application is received at the correct State agency office.

(J) The State agency shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA are already participating in the Food Stamp Program directly through the State agency.

(K) If SSA takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a food stamp application shall also be completed during the telephone interview. In these cases, the food stamp application shall be mailed to the claimant for signature for return to the SSA office or to the State agency. SSA shall then forward any food stamp applications it receives to the State agency. The State agency may not require the household to be interviewed again in the food stamp office. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits except in accordance with § 273.2(k)(1)(i)(F).

(L) To SSI recipients redetermined for SSI by mail, the SSA shall send a stuffer informing them of their right to file a food stamp application at the SSA office (if they are members of a pure SSI household) or at their local food stamp office, and their right to an out-of-office food stamp interview to be performed by the State agency if the household is unable to appoint an authorized representative.

(M) Section 272.4 bilingual requirements shall not apply to the Social Security Administration.

(N) State agencies shall provide and SSA shall distribute an information sheet or brochure to all households processed under this paragraph. This material shall inform the household of the following: The address and telephone number of the household's correct food stamp office, the remaining actions to be taken in the application process, and a statement that a household should be notified of the food stamp determinations within thirty days and can contact the food stamp office if it receives no notification within thirty days, or has other questions or problems. It shall also include the client's rights and responsibilities (including fair hearings, authorized representatives, out-of-office interviews, reporting changes and timely reapplication), information on how and where to obtain coupons, and how to use coupons (including the commodities clients may purchase with coupons).

(O) As part of the SSA-State agency joint food stamp processing agreement, States may negotiate, on behalf of project areas, to have SSA provide initial eligibility and payment data where the local area is unable to access accurate and timely data through the State's SDX. However, in negotiating such agreements, SSA may challenge a State's determination that it does not have the computer capability to use SDX data. If SSA, FNS, and the State are unable to resolve this matter, and SSA determines that a State does have the capability to provide accurate and timely SDX data to the food stamp project area, SSA is not required to provide alternate means of transmitting initial SSI eligibility and payment data.

(ii) If the State agency chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed.

(A) SSA will provide adequate space for State food stamp eligibility workers in SSA offices.

(B) The State agency shall have at least one outstationed worker on duty at all time periods during which households will be referred for food stamp application processing. In most cases this would require the availability of an outstationed worker throughout normal SSA business hours.

(C) The following households shall be entitled to file food stamp applications with, and be interviewed by an outstationed eligibility worker:

(*1*) Households containing an applicant for or recipient of SSI;

(*2*) Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under Title II of the Social Security Act, if the State agency and SSA have an agreement to allow the processing of such households at SSA offices.

(D) Households shall be interviewed for food stamps on the day of application unless there is insufficient time to conduct an interview. The State agency shall arrange for the outstationed worker to interview applicants as soon as possible.

(E) The State agency shall not refuse to provide service to persons served by the SSA office because they do not reside in the county or project area in which the SSA office is located, provided, however, that they reside within the jurisdictions served by the SSA office and the State agency. The State agency is not required to process the applications of persons who are not residing within the SSA office jurisdiction but who do reside within the State agency's jurisdiction, other than to forward the forms to the correct food stamp offices.

(F) The State agency may permit the eligibility worker outstationed at the SSA to determine the eligibility of households, or may require that completed applications be forwarded elsewhere for the eligibility determination.

(G) Applications from households entitled to joint processing through an outstationed eligibility worker shall be considered filed on the date they are submitted to that worker. Both the normal and expedited service time standards shall begin on that date.

(H) Households not entitled to joint processing shall be entitled to obtain and submit applications at the SSA office. The outstationed eligibility worker need not process these applications except to forward them to the correct food stamp office where they shall be considered filed upon receipt (any activities beyond acceptance and referral of the application would require SSA concurrence). Both the normal and expedited service time standards shall begin on that date.

(iii) Regardless of whether the State agency or SSA conducts the food stamp interview, the following actions shall be taken:

(A) *Verification.* (*1*) The State agency shall ensure that information required by § 273.2(f) is verified prior to certification for households initially applying. Households entitled to expedited certification services shall be processed in accordance with § 273.2(i).

(*2*) The State agency has the option of verifying SSI benefit payments through the State Data Exchange (SDX), the Beneficiary Data Exchange (BENDEX) and/or through verification provided by the household.

(*3*) State agencies may verify other information through SDX and BENDEX but only to the extent permitted by data exchange agreements with SSA. Information verified through SDX or BENDEX shall not be reverified unless it is questionable. Households shall be given the opportunity to provide verification from another source if all necessary information is not available on the SDX or the BENDEX, or if the SDX/BENDEX information is contradictory to other household information.

(B) *Certification period.* (*1*) State agencies shall certify households under these procedures for up to twelve months, according to the standards in § 273.10(f), except for State agencies which must assign the initial certification period to coincide with adjustments to the SSI benefit amount as designated in § 273.10(f)(3)(iv).

(*2*) In cases jointly processed in which the SSI determination results in denial, and the State agency believes that food stamp eligibility or benefit levels may be affected, the State agency shall send the household a notice of expiration advising that the certification period will expire the end of the month following the month in which the notice is sent and that it must reapply if it wishes to continue to participate. The notice shall also explain that its certification period is expiring because of changes in circumstances which may affect food stamp eligibility or benefit levels and that the household may be entitled to an out-of-office interview, in accordance with § 273.2(e)(2).

(C) *Changes in circumstances.* (*1*) Households shall report changes in accordance with the requirements in § 273.12. The State agency shall process changes in accordance with § 273.12.

(*2*) Within ten days of learning of the determination of the application for SSI through SDX, the household, advisement from SSA where SSA agrees to do so for households processed under § 273.2(k)(1)(i), or from any other source, the State agency shall take required action in accordance with § 273.12. State agencies are encouraged to monitor the results of the SSI determination through SDX and BENDEX to the extent practical.

(*3*) The State agency shall process adjustments to SSI cases resulting from mass changes, in accordance with provisions of § 273.12(e).

(D) *SSI households applying at the food stamp office.* The State agency shall allow SSI households to submit food stamp applications to local food stamp offices rather than through the SSA if the household chooses. In such cases all verification, including that pertaining to SSI program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the State agency rather than being provided by the SSA.

(E) *Restoration of lost benefits.* The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency or by the Social Security Administration through joint processing. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with SSA or with a State agency's outstationed worker. Lost benefits shall be restored in accordance with § 273.17.

(2) *Recertification.* (i) The State agency shall complete the application process and approve or deny timely applications for recertification in accordance with § 273.14 of the food stamp regulations. A face-to-face interview shall be waived if requested by a household consisting entirely of SSI participants unable to appoint an authorized representative. The State agency shall provide SSI households with a notice of expiration in accordance with § 273.14(b), except that such notification shall inform households consisting entirely of SSI recipients that they are entitled to a waiver of a face-to-face interview if the household is unable to appoint an authorized representative.

(ii) Households shall be entitled to make a timely application (in accordance with § 273.14(b)(3)) for food stamp recertification at an SSA office under the following conditions.

(A) In SSA offices where § 273.2(k)(1)(i) is in effect, SSA shall accept the application of a pure SSI household and forward the completed application, transmittal form and any available verification to the designated food stamp office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the State agency may conduct an out-of-office interview, if necessary.

(B) In SSA offices where § 273.2(k)(1)(ii) is in effect, the outstationed worker shall accept the application and interview the recipient and the State agency shall process the application according to § 273.14.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.3 Residency.

Households must be living in the project areas in which they file applications for participation unless the State agency has made arrangements, to allow particular households to file applications for participation in nearby specified project areas. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. A fixed residence is not required; for example, migrant campsites satisfy the residency requirement. Nor shall residency require an intent to reside permanently in the State of project area. Persons in a project area solely for vacation purposes shall not be considered residents.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[46 FR 60166, Dec. 8, 1981, as amended by Amdt. 211, 47 FR 53317, Nov. 26, 1982]

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* State agencies shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

(1) A United States citizen.

(2) An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act.

(3) An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.

(4) An alien who is qualified for entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationalization Act.

(5) An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(a)(7) of the Immigration and Nationalization Act.

(6) An alien granted asylum through an exercise of discretion by the Attorney General pursuant to section 208 of the Immigration and Nationalization Act.

(7) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General.

(8) An alien living within the United States for whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

(b) *Ineligible aliens.* Aliens other than those described above shall not be eligible to participate in the program as a member of any household. Among those excluded are alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien who would be considered a member of a household if he or she did not have ineligible alien status shall be considered in determining eligibility or level of benefits of the household in the same manner as the income and resources of a disqualified individual as set forth in § 273.11(c).

(d) *Awaiting verification.* If verification of eligible alien status as required by § 273.2(f) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the individual whose alien status is unverified shall be treated in the same manner as a disqualified member as set forth in § 273.11(c) and considered available in determining the eligibility of the remaining household members. If verification of eligible alien status is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with timeliness standards in § 273.12.

(e) *Reporting illegal aliens.* (1) The State agency shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the United States in violation of the Immigration and Nationality Act.

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, that member should be classified as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, that person should be classified as an ineligible alien. In such cases the State agency shall not continue efforts to obtain that documentation.

[Amdt. 189, 47 FR 17763, Apr. 23, 1982; Amdt. 237, 47 FR 57668, Dec. 28, 1982]

§ 273.5 Students.

(a) *Applicability.* Any person who is (1) between the ages of 18 and 60; (2) physically and mentally fit; and (3) enrolled at least half time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless that person complies with the eligibility requirements of paragraph (b) of this section. This section does not apply to persons age 17 or under, persons age 60 or over, persons physically or mentally disabled, persons attending high school, persons participating in on-the-job training programs, persons not attending school at least half time, or to persons enrolled full-time in schools and training programs which are not institutions of higher education.

(b) *Eligibility requirements.* (1) In order to be eligible to participate in the Food Stamp Program, any student (as defined in paragraph (a) of this section) shall meet at least one of the following criteria:

(i) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receive weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(ii) Participate in a federally financed work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965 as amended) during the regular school year;

(iii) Be responsible for the care of a dependent household member under the age of six.

(iv) Be responsible for the care of a dependent household member who has reached the age of six but is under age twelve where the State agency has determined that adequate child care is not available.

(v) Receiving benefits from the Aid to Families with Dependent Children Program.

(2) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through

normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).

(3) The income and resources of an ineligible student living with a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d) of this part.

[46 FR 43025, Aug. 25, 1981, as amended by Amdt. 235, 47 FR 55908, Dec. 14, 1982]

§ 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or inability to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained in accordance with paragraph (c) of this section. The member that has applied for an SSN shall be allowed to participate for 30 days from the first day of the first full month of participation while awaiting receipt of the SSN.

(b) *Obtaining SSN's for food stamp household members.* (1) For those individuals who provide SSN's prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals required to provide an SSN who do not have one, the State agency shall act as follows. A State agency with an enumeration agreement with SSA shall either require the individual to apply for an SSN through the State agency or shall allow the individual to choose between applying through the State agency or at SSA. A State agency without an enumeration agreement shall require the individual to apply for an SSN at SSA.

(i) If an individual applies through the State agency, the State agency shall complete the application for an SSN, Form SS-5. State agencies which have such an agreement with SSA for AFDC and Medicaid shall be required to renegotiate these agreements for food stamp purposes as soon as possible in order to offer this service to food stamp applicants and participants. To complete Form SS-5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS-5 to SSA. The State agency can complete the SS-5 only when this renegotiated agreement between SSA and the State exists.

(ii) If an individual applies at the SSA, the State agency shall inform the household where to apply and what information will be needed. The State agency shall suggest that the household member ask for proof of application from SSA, in the event his or her application is not processed within the 30-day time period described in paragraph (a) of this section. SSA normally uses the *Receipt for Application for a Social Security Number,* Form SSA-5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2)(i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(c) *Failure to comply.* If the State agency determines that a household member(s) required to provide an SSN as a condition of eligibility has refused to provide it, then the individual without the SSN shall be ineligible to participate in the Food Stamp Program. If, at the end of the 30 day period allowed in paragraph (a) of this section, the State agency determines that a household member required to provide an SSN has failed without good cause to obtain an SSN, the individual without the SSN shall be ineligible to participate. The disqualification applies to the individual(s) for which the SSN is not provided and not to the entire household. The earned or unearned income of an individual disqualified from the household for failure to comply with this requirement shall be handled as outlined in § 273.9(b)(3) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to provide the State agency with an SSN, the State agency shall consider information from the household member, the Social Security Administration and the State agency (especially if the State agency was designated to send the SS-5 to SSA and either did not process the SS-5 or did not process it in a timely manner). Documentary evidence or collateral information that the household has applied for the number or made every effort to supply SSA with the necessary information shall be considered good cause for not complying timely with this requirement. If the household member(s) can show good cause why an SSN has not been obtained in a timely manner, they shall be allowed to participate for an additional 30 days. If the household member(s) applying for an SSN has been unable to obtain the documents required by SSA, the State agency caseworker should make every effort to assist the individual(s) in obtaining these documents.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSN.* The State agency is authorized to use social security numbers in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of HEW, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under Title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSN's to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households.

(g) *Entry of SSN's into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all social security numbers obtained in accordance with § 273.6(a)(1) into these files.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 163, 45 FR 7238, Feb. 1, 1980, as amended by Amdt. 213, 47 FR 50184, Nov. 5, 1982; Amdt. 211, 47 FR 53318, Nov. 26, 1982]

§ 273.7 Work registration requirements.

(a) *Persons required to register.* The State agency shall determine which household members are required to register for employment. Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment at the time of application, and once every twelve months after initial registration, as a condition of eligibility. Registrants who move out of a project area shall reregister at their new location unless the registrant's new address is within the same SESA jurisdiction (in which case the State agency shall notify SESA of the registrant's change in address). Under the provisions of § 273.1(f)(1), the registration form need not be completed by the member required to register.

(b) *Exemptions from work registration.* (1) The following persons are exempt from the work registration requirement:

(i) A person younger than 18 years of age or a person 60 years of age or older. If a child has its 18th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption.

(ii) A person physically or mentally unfit for employment. If a mental or physical disability is claimed and the disability is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(iii) A household member subject to and participating in the work incentive program (WIN) under Title IV of the Social Security Act. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption.

(iv) A parent or other household member who is responsible for the care of a dependent child under 6 or an incapacitated person. If the child has its 6th birthday within a certification period, the individual responsible for the care of the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(v) A person is in receipt of unemployment compensation. A person who has applied for, but has not yet begun to receive, unemployment compensation shall also be exempt if that person was required to register for work with the SESA as part of the unemployment compensation application process. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption with the appropriate office of the SESA.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) A person who is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours. This shall include migrant and seasonal farmworkers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this shall not prevent individuals from seeking additional services from SESA). For work registration purposes, a person residing in certain designated areas of Alaska, as specified in § 274.10(e), who subsistence hunts and/or fishes a minimum of 30 hours weekly shall be considered exempt as self-employed.

(viii) A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that students enrolled at least half time in an institution of higher education have met the eligibility conditions in § 273.5 of this part. A student enrolled in a school, training program or institution of higher education shall remain exempt during normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer). Persons who are not enrolled at least half time or who experience a break in enrollment status due to graduation, expulsion, or suspension, or who drop out or otherwise do not intend to return to school, shall not be considered students for the purpose of qualifying for this exemption.

(2)(i) Persons losing exemption status due to any change in circumstances that is subject to the reporting requirements of § 273.12 (such as a loss of employment that also results in a loss in income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the change is reported in person by the household member required to register, the person shall complete the work registration form at the time the change is reported, unless this is not possible, in which case the household member shall return the form to the State agency within 10 days. If the change is reported in person by a household member other than the member required to register, the person reporting the change may complete the form at the time the change is being reported or deliver the form to the member required to register. If the change is reported by phone or through the mail, the State agency shall be responsible for providing the participant with a work registration form. Participants shall be responsible for returning the form to the State agency within 10 calendar days from either the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated, but that the household can avoid termination by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 shall register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State agency shall participate with the SESA in the development of a State Work Registration Plan and in annually reviewing and updating the plan, as prescribed under paragraph (d) of this section. The Plan/agreements (including annual updates) shall be submitted to the FNS Regional Office for review and comment. The Plan and agreements shall be available for public inspection at the State agency headquarters.

(2) Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the work registration and job search requirements, his or her rights and responsibilities, and the consequences of failure to comply. The State agency shall provide work registration forms to the applicant for each household member required to register for employment, and permit the applicant to complete the form for those members in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency. An identifiable form shall contain those items necessary for partial entry into the Employment Service Automated Reporting System (ESARS): The applicant's name, address, phone number, social security number (or some other identifying number when a social security number is not available), the expiration date of the household's certification period, an indication of exemption from job search, and any other information agreed upon by the State agency and SESA in their operating agreements. The State agency and SESA must agree before any information in the last category can be specifically required. If the registrant is an instream migrant and seasonal farmworker, or if the State agency knows that the registrant would otherwise be exempt from job search under the provisions of paragraph (f)(1)(ii)(c) of this section, the State agency shall also indicate this on the registration form. The State agency shall not forward work registration forms to SESA until the household is certified, so that SESA will not have to expend unnecessary efforts on applicants who are subsequently denied rather than certified for food stamps. No later than five days after the date of household certification, the State agency shall forward the completed work registration form to the SESA having jurisdiction over the area where the registrant resides.

(3) The State agency shall be responsible for notifying the appropriate SESA of those work registrants who become exempt from the work registration requirement subsequent to registration, are no longer certified for participation in the Program, or move from the area. Such notification shall be provided to the SESA within a reasonable timeframe established and agreed on by both agencies, but not to exceed 30 days from the date the change becomes known to the State agency. The State agency shall also notify SESA promptly of a change in address if the State agency becomes aware that a work registrant has moved from one location to another within the same SESA jurisdiction.

(d) *State Employment Security Agency (SESA) responsibilities*—(1) *Funding.* Each SESA shall participate in the work registration and job search activities for food stamp registrants to the extent that the funds necessary for proper and efficient administration are made available. Each year the Employment and Training Administration of the Department of Labor and FNS will negotiate funding levels based on available appropriations and on agreed upon projections of workload levels and the types of services to be provided. These funding levels will be included in an interagency agreement between the U.S. Department of Agriculture and the Department of Labor regarding the administration and operation of the

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work registration provisions of the Food Stamp Act of 1977.

(2) *Development of plans/agreements.* The SESA shall have primary responsibility for developing with the State agency a Work Registration Plan. The Plan shall set forth workload projections, staffing, and other information requested by the Departments. It shall also include the specific operational agreements developed by the State agency and the SESA at the State and local levels in meeting the requirements of this section. Such plan and agreements shall be annually reviewed by the State agency and the SESA and updated as appropriate. Additionally, the Plans/agreements (including annual updates) shall be submitted to the DOL Regional Office for review and approval.

(3) *Other responsibilities.* Following receipt of the work registration form from the State agency the SESA shall be responsible for taking the following actions:

(i) Entering the information from the work registration form into the Employment Service Automated Reporting System (ESARS).

(ii) Scheduling work registrants for interview appointments with the exception that those persons who would be exempt from job search, as defined in paragraph (f)(1)(ii)(c) of this section, shall not be required to report for such an interview. The SESA shall send the registrant a letter informing the registrant of the date of the interview, that appearance for an interview at SESA is a condition of participation in the food stamp program, and how the registrant can contact SESA to reschedule the interview if necessary. Such interview shall normally be scheduled to occur within 2 weeks of the date the work registration form reaches the SESA. If the work registrant fails to appear for the first interview and has not contacted SESA in advance to reschedule the initial interview, the SESA shall send a second letter scheduling another interview to occur within the next two weeks. This letter shall inform the registrant of the date of the rescheduled interview, explain to the registrant that this is SESA's last attempt to schedule the interview and the consequences of failing to appear for the rescheduled interview appointment without good cause, and the procedures for the household to contact the SESA if the rescheduled interview cannot be attended by the work registrant for good cause. SESA and the State agency may establish alternative methods for scheduling or rescheduling interviews (such as allowing the State agency to schedule a participant's appointment with the SESA) so long as the registrant is contacted and afforded an opportunity to reschedule a missed interview and the time frames established above are met.

(iii) Interviewing work registrants for potential job placement. At the time of the interview, the SESA will complete the work registration form if needed information on the work registrant's past experience or skills is missing. The SESA shall attempt to match the work registrant with an available job opening. If the work registrant has specific counselling or testing needs, the services shall be provided in the same manner in which they are provided to all persons seeking employment assistance through the SESA. If the SESA finds that the work registrant has training needs, and knows of services such as CETA or the Job Corps which could meet these needs, the work registrant shall be directed to those services, if available. SESA will provide the work registrant with job market information (such as a list of available job opportunities) and referrals to available employment in the same manner that such services are provided to all persons seeking employment assistance through the SESA.

(iv) If the State agency has required an individual to register for work and the SESA disagrees, the SESA shall request the State agency to reconsider its determination. The State agency's response will be accepted by the SESA as final. If the State agency reverses its decision or does not respond to the request within 30 days, the SESA shall inactivate the registrant from ESARS.

(v) Establishing and maintaining the job search requirements established in paragraph (f) of this section, administering the job search requirement, and assisting the work registrant in conducting his or her job search.

(vi) Attempting to match work registrants with available job openings at the time of the work registrant's initial and subsequent visits to the SESA and on a continuing basis.

(vii) Reporting to the State agency both on work registrants who fail to comply, without good cause, with either the job search requirements established in § 273.8(f), or the additional work requirements established in paragraph (e) of this section, and on those registrants who obtain employment. The SESA shall notify the State agency within five working days of the date such information becomes known to the SESA.

(e) *Additional work requirements.* Work registrants shall also: (1) Report for an interview upon the reasonable request of the appropriate State employment service office;

(2) Respond to a request from the State employment service office for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State employment service office, if the potential employment meets the suitability requirements described in paragraph (i) of this section.

(4) Accept a bona fide offer of suitable employment, as defined in paragraph (i) of this section, to which referred by the State employment service office; and

(5) Continue suitable employment to which referred by the State employment service office. Household members shall continue such employment until it is no longer considered suitable in accordance with paragraph (i) of this section, until they are terminated from employment due to circumstances beyond their control, or until they become exempt from the work registration requirement as provided in paragraph (b) of this section.

(f) *Job search.* Persons required to register for work shall be subject to the appropriate job search requirements. The State agency may require Program applicants, as well as Program participants to conduct job search. The appropriate requirement shall be established at the time of the initial assessment interview (which may be at application) and at subsequent interviews. If it is known or determined from available information that the work registrant would be exempt from actively engaging in a job search, no assessment interview will be required. Failure to comply with the job search requirements, without good cause, shall result in household disqualification or denial, as established in paragraph (g) of this section. A State agency opting to require job search of applicants shall not delay or deny the application pending proof of compliance with this requirement.

(1) *Job search assignment.* (i) During the initial assessment interview, the SESA shall determine the job search category of each work registrant. The SESA shall provide to each registrant written notification regarding his or her job search requirements, procedures to be followed, and the consequences of failure to comply.

(ii) Based on the capabilities and characteristics of the participant, including his or her age, physical condition, ability or inability to speak English, current enrollment in job training programs, and recent employment history, as well as the job market situation in the area, the SESA shall put each work registrant into one of the followng categories:

(A) *Category I—Job ready.* Those work registrants that have no apparent substantial barriers to employment.

(B) *Category II—Non-job ready.* Those work registrants with substantial barriers to employment, e.g., medical, transportation, language, or family problems, that alone or in conjunction with adverse labor market conditions, would make them difficult to place. Transportation problems shall include the unavailability on a regular basis of either private or public transportation or the minimum financial resources necessary to obtain available public transportation. Job attached persons, e.g., those on temporary layoff or those expecting to return to work within 60 days, shall be placed in this category for 60 days from the date of initial registration.

At the end of the 60-day period, job attached persons, if still unemployed, may be recategorized as appropriate.

(C) *Category III—Exempt.* Those work registrants for whom a job search is determined to be impractical, specifically including those individuals residing an unreasonable distance from the appropriate SESA office or potential employers (a distance shall be considered unreasonable if the round trip exceeds 2 hours by reasonably available public or private transportation), and migrant and seasonal farmworkers away from their home base and following the work stream. SESA's must insure that migrant and seasonal farmworkers are offered all services described in Subpart B of 20 CFR Part 653. The SESA determination of exempt status shall be made at the time the work registration form is received from the State agency to preclude the need of such persons to travel to the SESA for an assessment interview, unless it is impossible for the SESA to determine exempt status from the form for a particular registrant. The SESA office should be able to determine from the form those work registrants who are exempt because of distance, as the registrant's address is contained on the form. In addition, State agencies are required to note the status of instream migrant or seasonal farmworkers on the form, and also to indicate on the form whenever the State agency knows that an exemption would apply for any other reason. FNS and the Department of Labor may also jointly establish general exemptions for residents of certain areas or certain groups if, due to geographic or economic characteristics or similar reasons, application of the job search requirements is determined impracticable. For example, exemptions could be provided for residents of all or part of an Indian reservation where there are few job opportunities within reasonable distance, or for an area with an extremely high unemployment rate and a virtual absence of employment opportunities. Requests for such general exemptions may originate with the local or State level SESA or State agency, or from other knowledgeable sources (such as an Indian tribal organization).

(2) *Requirements.* (i) Persons classified as Category I shall be subject to and must comply with the job search requirements discussed below for a period of eight weeks each time they are entered into ESARS (which occurs after losing a work registration exemption or reentering the food stamp program after a period of absence), or each twelve months, whichever occurs sooner. The SESA office may require either that the eight week period be one continuous period, or that it be divided into two separate job search periods that total eight weeks. For example, the SESA office might require a registrant to undertake two four-week job searches, with the second period following six months after the first. The SESA may schedule the job search period(s) at the time(s) it believes the job search would be most effective, taking into account job market conditions and the registrant's skills and experience. SESA may shorten or suspend the job search period if economic or personal circumstances warrant. The SESA could suspend a job search period and then resume it later if factory closings or other circumstances made it likely that the job search period would be more productive at a subsequent time. Registrants who remain continuously on the program are not subject to a new job search requirement at the time of semi-annual routine re-registration. These requirements are effective for 12 months starting with the month of initial registration and remain in effect until a registrant's information is removed from ESARS (inactivated), or the 12 months expire, whichever occurs first. Once a registrant is removed from ESARS, any new entry for that registrant into ESARS constitutes a new 12 month timeframe and a new job search activity of up to 8 weeks. If SESA is aware that a registrant has been entered into ESARS more than once in a 12-month period, the SESA shall consider the registrant's previous job search activity during the 12-month period, and the anticipated impact of additional job search, in determining the registrant's new job search requirements. Registrants subject to the job search re-

quirements must take the following actions:

(A) Contact, as required by SESA, up to twenty-four prospective employers during the eight-week period. If the job search period is shortened, the number of required job contacts shall be reduced on a pro-rata basis, to the maximum extent practicable. A referral by SESA to an employer shall be considered a job contact for Food Stamp Program purposes, provided the registrant presents himself/herself to the employer as described in paragraph (f)(4) of this section.

(B) Twice during the eight-week job search period, report at a prescheduled time to the SESA on the result of all job contacts. If the eight-week job search activity is divided into two separate periods, SESA may require the registrant to report once during each period of job search activity. Job contacts shall be reported in written form as discussed in paragraph (f)(5) of this section. At the time of each subsequent interview, as discussed in paragraph (f)(5) of this section, the SESA will be responsible for reviewing its files to determine if current referral possibilities exist.

(ii) Work registrants classified as Category II will not be assigned any specific job search activity. Job attached persons who have not returned to their jobs or otherwise become exempt from the work registration requirement may be called in for reassessment at the end of sixty days. Other persons may be called in by the SESA during the six-month registration period. During subsequent interviews, job files will be reviewed for potential referrals, and the job search categorization of such individuals will be reassessed.

(iii) Work registrants classified as Category III will not be required to fulfill job search requirements until such time as that classification as Category III is no longer applicable and the work registrant is reclassified into an active job search category.

(3) *Follow-up activities.* (i) At the time of the initial assessment interview with the work registrant, the SESA will establish a schedule for two follow-up interviews over the job search period for Category I registrants. SESA may reduce the number of follow-up interviews to one for Category I registrants when the job search period and number of job contacts are reduced. Such schedules shall be documented and provided in written form to the work registrant. Category II registrants will be informed that they may be contacted either within the six-month registration period or in 60 days if they are job attached. If the work registrant fails to report for the follow-up interview for any reason, and has not contacted SESA in advance to reschedule the interview, the SESA shall contact the work registrant by letter to schedule another interview within the next two weeks. The letter shall inform the registrant of the date of the rescheduled interview, explain to the registrant the consequences of failing to appear for the rescheduled interview without good cause, and provide procedures for contacting the SESA if the rescheduled interview cannot be attended by the work registrant for good cause. If the work registrant fails to report to the rescheduled interview, without good cause, the State agency shall be notified of the failure within five working days of the date of the failure. Follow-up interviews will normally consist of in-person interviews at the SESA office, but SESA may make alternate arrangements where necessary (for example, SESA could conduct a follow-up interview by telephone and direct the registrant to mail its report on job contacts to SESA if roads are impassable due to snow).

(ii) At the time of each follow-up interview, the SESA shall review the job contacts made by the work registrant, review job listings for potential referrals, and assist the work registrant in establishing his or her future plans for seeking employment.

(4) *Job contact.* To qualify as a job contact, two conditions must be met. First, the work registrant must present himself or herself to a prospective employer as available for work. Second, the prospective employer must ordinarily employ persons in areas of work that meet the suitability requirements discussed in paragraph (i) of this section and for which the

work registrant is reasonably qualified by means of experience, training or ability. Depending upon the position being sought, the job contact requirement may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the SESA to be generally accepted practice. The work registrant cannot contact the same employer in subsequent weeks unless the initial contact indicated that vacancies in suitable job positions may soon exist.

(5) *Reporting job contacts.* (i) Job contacts shall be reported in writing in a manner prescribed by the SESA. At the time of the initial interview with the SESA, the work registrant shall be told about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the work registrant shall be required to sign the written documentation to attest to its validity. The written report shall be submitted to the SESA at the time of the work registrant's follow-up interviews.

(ii) The work registrant shall be responsible for providing the SESA, upon reasonable request, any additional information regarding job contacts.

(iii) At the end of the job search period, the SESA shall determine if the work registrant has completed the assigned number of job contacts. If the work registrant was assigned a continuous job search period of less than 8 weeks, the registrant shall have two additional weeks to complete any missed contacts. If the work registrant was assigned a single continuous 8-week job search period, no additional time shall be allowed unless the SESA fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make-up the disallowed contact(s). Persons failing to complete the required number of job contacts with good cause shall be excused from completion of the job search requirements.

(6) *SESA review.* If a work registrant believes that a SESA determination is improper, review of the determination may be obtained from a designated SESA official not involved in the original determination. For example, if the work registrant believes he or she has been improperly assigned to a job search category or assigned an improper number of job search contacts, or that an action which should have been counted as a contact was not, a review may be obtained. This would also apply to a SESA determination that noncompliance was not for good cause.

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program regulations.* If the State agency is informed by the SESA that a household member has refused or failed without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate as provided in this paragraph. Such ineligibility shall continue until either the member complies with the requirement in paragraph (h) of this section, or the member becomes exempt, or for 2 months, whichever occurs earlier. Prior to informing the State agency of the registrant's noncompliance, the SESA shall be responsible for contacting the work registrant to determine if good cause existed, as discussed in paragraph (h) of this section. Within 10 days after the SESA provides notification of the work registrant's failure to comply with the requirements of this section, the State agency shall provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Information shall also be included with the notification on the procedures and requirements contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a SESA determination of failure to comply with the work registration and job search requirements of this section. The household can appeal SESA actions such as the job search category assigned, the number of job search contacts required, SESA refusal to accept an action as a job search contact, or SESA refusal to make a finding of good cause, if the household believes that a finding that the household has failed to comply has resulted from improper decisions on these matters. If a fair hearing is scheduled, the State agency shall provide the SESA sufficient advance notice to either permit the attendance of a SESA representative or ensure that a SESA representative will be available for questioning over the phone during the hearing. SESA shall be available to participate in the hearing through one of these means. The availability of a SESA representative for questioning over the phone shall be sufficient, unless the hearing official determines at the hearing (after examining the facts of the case and pursuant to a request for such a ruling by the household) that, taking into account the nature of the issues in dispute and the nature and importance of the evidence to be given by the SESA representative, fairness requires that the household be given an opportunity to confront the SESA representative in person. Such a determination should be necessary in only a very small number of cases. If such a determination is made, the hearing shall be adjourned, and rescheduled for a time at which the SESA representative is able to attend. In such an event, the timeframes prescribed by § 273.15(c) for State agencies to render fair hearing decisions shall be extended for as many days as elapse between the original fair hearing and the rescheduled fair hearing. A household shall be allowed to examine its SESA casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that SESA determines should be protected from release. Information not released to a household may not be used by the State agency or SESA at the fair hearing. The results of the State agency fair hearing shall be binding on both the State and SESA.

(2) *Failure to comply with a comparable WIN or unemployment compensation work requirement.* A household containing a member who was exempt from work registration in accordance with paragraph (b)(1)(iii) or (b)(1)(v) of this section because he or she was registered for work under WIN or unemployment compensation and who fails to comply with a WIN or unemployment compensation requirement comparable to a food stamp work registration or job search requirement shall be treated as though the member had failed to comply with the corresponding food stamp requirements.

(i) If the State agency learns that a household member has refused or failed without good cause to comply with a WIN or unemployment compensation requirement, the State agency shall determine whether the requirement was comparable. Similarly, if the household reports the loss or denial of AFDC or unemployment compensation or if the State agency otherwise learns of such loss or denial, the State agency will determine whether the loss or denial was caused by a determination by the administering agency that a household member refused or failed without good cause to comply with the work requirement and, if so, whether the requirement was comparable to the work registration or job search requirement. The WIN or unemployment compensation requirement shall not be considered comparable if it places responsibilities on the household which exceed those imposed by the food stamp work registration requirements.

(ii) If the State agency determines that the requirement is comparable, the entire household shall be disqualified in accordance with the following provisions. The State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after learning of the household member's noncompliance with the unemployment compensation or WIN requirement. The notice shall comply with the requirements of § 273.7(g)(1). A household shall not be disqualified from participation if the noncomplying member meets one of the work registration exemptions provided in § 273.7(b) other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of that section. Household members who fail to comply with a non-comparable WIN or unemployment compensation requirement shall lose their exemption under § 273.7(b)(1)(iii) and (v), and must register for work if required to do so in § 273.7(a).

(iii) If the State agency determination of noncompliance with a comparable WIN or unemployment compensation work requirement leads to a denial or termination of the household's food stamp benefits, the household has a right to appeal the decision in accordance with the provisions of § 273.7(g)(1).

(iv) A disqualified household may resume participation in the Program in accordance with paragraph (h) of this section.

(h) *Ending disqualification.* (1) Following the end of the 2-month disqualification period for noncompliance with the work registration and/or job search provisions prescribed under paragraphs (a), (e), or (f) of this section, a household may resume participation in the program if it applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household (although any new household containing this member shall be subject to disqualification for the remainder of the disqualification period), or the member complies as follows:

(i) Refusal to register—registration by the household member.

(ii) Refusal to respond to a request from the State employment service office requiring supplemental information regarding employment status or availability for work—compliance with the State employment service office request.

(iii) Refusal to report to an employer to whom referred by the State employment service office—reporting to this employer if work is still available or to another employer to whom referred.

(iv) Refusal to accept a bona fide offer of unsuitable employment to which referred by the SESA—acceptance of the employment if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(v) Refusal to continue suitable employment to which referred by the SESA—returning to this employment, if still available to the participant, or securing any other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(2) Persons failing to comply initially with the job search requirements, i.e., the assessment interview, follow-up interviews, and job contacts, are provided with a second opportunity to comply by the procedures established in paragraph (f) of this section. If the work registrant fails to comply on the second opportunity, without good cause, and such failure results in disqualification, the disqualification of the household containing the work registrant may be ended only if the person who caused the disqualification becomes exempt from the work registration requirements or is no longer a member of the household (although any new household containing this person shall be subject to disqualification for the remainder of the disqualification period), or at the end of two months, whichever occurs earlier. This means, for example, that if the noncomplaint household member secures full-time employment and thereby becomes exempt from the work registration requirement before the two month disqualification period is over, the disqualification would end at that point.

(i) *Suitable employment.* (1) Any employment shall be considered unsuitable if:

(i) The wage offered is less than the highest of:

(A) The applicable Federal minimum wage; (B) the applicable State minimum wage; or (C) eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (i)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(2) In addition, employment shall be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor shall employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath.

(j) *Participation of strikers.* Strikers whose households are eligible under the criteria in § 273.1(g) shall be subject to the work registration requirements unless exempt under paragraph (b) of this section at the time of application.

(k) *Registration of certain PA, GA, and refugee households.* (1) State agencies may request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the WIN registration requirements or for GA households. Work requirements imposed on refugees participating in refugee resettlement programs including but not limited to the Indochinese Refugee Assistance Program may also be substituted, with FNS approval. To receive approval, it must be demonstrated that:

(i) The work registration procedures are at least equivalent to food stamp work registration requirements;

(ii) Registrants' activities are monitored so that appropriate sanctions as required by these regulations will be applied. However, if additional work requirements (beyond those required under this section) are placed on household members, a household's food stamp benefits shall not be denied for the failure of a household member to comply with a requirement that exceeds the requirements of this section. For example, if a State rule requires individuals to register for work through age 65, any individual 60 years of age or older who fails to comply shall not be denied food stamp benefits as a result of that failure;

(iii) All household members which are not exempt under paragraph (b)(1) of this section are either registered for work under such Federal, State or local programs as described in this paragraph, or are registered for work as provided in paragraph (a) of this section.

(2) Household members who are required to register for work under WIN or unemployment compensation and fail to comply with comparable work requirements of those programs shall be handled in accordance with the provisions in § 273.7(g)(2).

(l) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) shall have the requirement for work registration waived until:

(1) They are determined eligible for SSI and thereby become exempt from work registration, or

(2) They are determined ineligible for SSI and where applicable, a determination of their work registration status is then made through recertification procedures in accordance with § 273.2(k)(1)(iii)(B)(*2*), or through other means.

(m) *Determining good cause.* The State agency shall be responsible for determining good cause in those instances where the work registrant has failed to comply with the work registration, job search, and voluntary quit requirements of this section. In determining whether or not good cause exists, the State agency shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(n) *Voluntary quit.* No household whose primary wage earner voluntarily quit his or her most recent job without good cause shall be eligible for participation in the Program as specified below. At the time of application, the State agency shall explain to the applicant the consequences of the household's primary wage earner quitting his or her job without good cause.

(1) *Determining whether a voluntary quit occurred and application processing.* (i) When a household files an application for participation, or when a participating household reports the loss of a source of income, the State agency shall determine whether any household member voluntarily quit his or her job. Benefits shall not be delayed beyond the normal processing times specified in section 273.2 pending the outcome of this determination. This provision applies only if the employment involved 20 hours or more per week or provided weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this section. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause.

(ii) In the case of an applicant household, the State agency shall determine whether any currently unemployed (i.e. employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for work has voluntarily quit his or her most recent job within the last 60 days. If the State agency learns that a household has lost a source of income after the date of application but before the household is certified, the State agency shall determine whether a voluntarily quit occurred.

(iii) In the case of a participating household, the State agency shall determine whether any household member voluntarily quit his or her job while participating in the Program.

(iv) If a determination of voluntary quit is established, the State agency shall then determine if that member is the household's primary wage earner. For purposes of this section, the primary wage earner shall be that household member age 18 or over who was acquiring the greatest amount of earned financial support for the household at the time of the quit. The primary wage earner is determined by comparing the projected earnings of the member who quit employment in the month the voluntary quit occurred as if he/she had not ceased employment against the actual or, if not available, the projected earnings of the remaining household members.

(v) Upon a determination that the primary wage earner voluntarily quit employment, the State agency shall determine if the voluntary quit was with good cause as defined in § 273.7(n)(3). In the case of an applicant household, if the voluntary quit was without good cause, the household's application for participation shall be denied and sanction imposed for 90 days, starting from the date of application. The State agency shall provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice shall inform the household of the proposed period of disqualification; its right to reapply at the end of the 90 day period; and of its right to a fair hearing. In the case of participating households, benefits shall be terminated for a period of 90 days, in accordance with paragraph (n)(1)(vi) of this section.

(vi) If the State agency determines that the primary wage earner of a participating household voluntarily quit his or her job, while participating in the Program, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a voluntary quit is made. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the disqualification period shall be for three months or 90 days beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month period only for participating households. For those households which leave the Program before the sanction can be levied, the sanction shall not be imposed until the household returns to the Program. Each household has a right to a fair hearing to appeal a reduction or termination of benefits due to a determination that the household's primary wage earner voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

(vii) If an application for participation in the Program is filed in the third month of disqualification, the State agency shall in accord with § 273.10(a)(3) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(2) Exemption from voluntary quit provisions. Persons who are exempt from the work registration provisions as stated in § 273.7(b) shall be exempt from the voluntary quit provisions.

(3) *Good cause.* Good cause for leaving employment includes the good cause provisions found in § 273.7(m), and resigning from a job that does not meet the suitability criteria specified in § 273.7(i). Good cause for leaving employment shall also include:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance by the primary wage earner of employment, or enrollment of at least half-time in any recognized school, training program or institution of higher education, that requires the primary wage earner to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the household to move and thereby requires the primary wage earner to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment which becomes unsuitable by not meeting the criteria specified in § 273.7(i) after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment shall be considered as with good cause if part of the pattern of that type of employment.

(4) *Verification.* (i) To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies shall request verification of the household's statements. The primary responsibility for providing verification as provided in § 273.2(f)(5) rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner the State agency shall offer assistance to the household to obtain the needed verification. Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives and grievance committees or organizations. Whenever documentary evidence cannot be obtained, the State agency shall substitute a collateral contact. The State agency is responsible for obtaining verification from acceptable collateral contacts provided by the household.

(ii) If the household and State agency are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Program.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.8 Resource eligibility standards.

(a) *Uniform standards.* The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. However, the State agency may consider households in which all members receive AFDC benefits and whose income does not exceed the gross income eligibility standards described under § 273.10(a)(1) to have satisfied the resource eligibility criteria of this section.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $1,500 for the household, except that, for households of two or more members including a member or members age 60 or over, such resources shall not exceed $3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household mem-

bers. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (h) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(3) For households containing sponsored aliens (as defined in § 273.11(h)(1)), resources shall also include that portion of the resources of an alien's sponsor and the sponsor's spouse (if living with the sponsor) which have been deemed to be those of the alien in accordance with the procedures established in § 273.11(h), unless the sponsored alien is otherwise exempt from this provision in accordance with § 273.11(h).

(d) *Jointly owned resources.* Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or disqualified individuals residing with the household shall be considered household members. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in § 271.2, if

(1) The resources are jointly owned by such persons and by members of their former household; and

(2) The shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, including one burial plot per household member, and the cash value of life insurance policies. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3) Licensed vehicles shall be excluded as specified in paragraph (h) of this section. The exclusion also includes unlicensed vehicles on those Indian reservations that do not require vehicles driven by tribal members to be licensed.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property, such as farm land and rental homes, or work related equipment, such as the tools of a tradesman

or the machinery of a farmer, which is essential to the employment or self-employment of a household member, except that rental homes which are used by households for vacation purposes at some time during the year shall be counted as resources unless excluded by paragraph (e)(4) of this section.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from non-household funds by a non-household member.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income is explained in § 273.10(c) and the treatment of self-employment income is explained in § 273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(i) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a)) or the Sac and Fox Indian claims agreement (Pub. L. 94-189);

(ii) Payments received by certain Indian tribal members under Pub. L. 94-114, section 6, regarding submarginal land held in trust by the United States;

(iii) Benefits received from the special supplemental food program for women, infants and children (WIC) (Pub. L. 92-443, section 9);

(iv) Reimbursements from the Uniform Relocation Assistance and Real

Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216);

(v) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95-600, the Revenue Act of 1978.

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524).

(vii) Payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).

(viii) Payments received by the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Pub. L. 95-433, section 2.

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, section 5).

(12) HUD retroactive tax and utility cost subsidy payments issued pursuant to settlement of *Underwood v. Harris* (Civil No. 76-0469, D.D.C.) against HUD, for the month in which payment was received and for the following month.

(13) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or disqualified household member (in accordance with paragraph (e)(2) of this section).

(14) Energy assistance payments or allowances excluded as income under § 273.9(c)(11).

(f) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph (e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(g) *Fair market value of licensed vehicles.* The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as "blue books." The State agency shall insure that the blue book used to determine the value of licensed vehicles has been updated within the last 6 months. The National Automobile Dealers Association's (NADA) Used Car Guide Book is a commonly available and frequently updated publication. The State agency shall assign the wholesale value to vehicles. If the term "wholesale value" is not used in a particular blue book, the State agency shall assign the listed value which is comparable to the wholesale value. The State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment. A household may indicate that for some reason, such as body damage or inoperability, a vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source. Also, households shall be asked to acquire verification of the value of licensed antique, custom made, or classic vehicles, if the State agency is unable to make an accurate appraisal. If a vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle. The blue book value shall be assigned as if the vehicle were not so equipped. If a vehicle is no longer listed in the blue book, the household's estimate of the value of the vehicle shall be accepted, unless the State agency has reason to believe the estimate is incorrect. In that case, and if it appears that the vehicle's value will affect eligibility, the household shall obtain an appraisal or produce other evidence of its value, such as a tax assessment or a newspaper advertisement which indicates the amount for which like vehicles are being sold. If a new vehicle is not yet listed in the blue book, the State agency shall determine the wholesale value through some other means (e.g., contacting a car dealer which sells that make of vehicle).

(h) *Handling of licensed vehicles.* The value of licensed vehicles shall be excluded or counted as a resource as follows:

(1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(i) Used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat;

(ii) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(iii) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farmworker following the work stream.

(iv) Necessary for subsistence hunting or fishing;

(v) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section; or

(vi) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle for physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

(2) The exclusion in paragraphs (h)(1) (i) through (v) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(3) All licensed vehicles not excluded under paragraph (h)(1) of this section shall individually be evaluated for fair market value and that portion of the value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value of $5,500 shall have $1,000 applied toward its resource level. Any value in excess of $4,500 shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market values of two or more vehicles shall not be added together to reach a total fair market value in excess of $4,500.

(4) Licensed vehicles shall also be evaluated for their equity value, except for:

(i) Vehicles excluded in paragraph (h)(1) of this section; (ii) one licensed vehicle per household, regardless of the use of the vehicle; and (iii) any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to household) to and from employment, or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e)(3), (4), or (5) of this section, shall be attributed toward the household's resource level.

(5) In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value is $5,000 and the equity value is $1,000 the household shall be credited with only the $1,000 equity value, and the $500 excess fair market value will not be counted.

(6) In summary, each licensed vehicle shall be handled as follows: First it will be evaluated to determine if it is exempt as an income producer or as a home. If not exempt, it will be evaluated to determine if its fair market value exceeds $4,500. If worth more than $4,500, the portion in excess of $4,500 for each vehicle will be counted as a resource. The vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than $4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

(i) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers:

(i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personnel property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

(ii) Resources which are sold or traded at, or near, fair market value;

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

(iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the

reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. For example, if a one-person household with $1,250 in a bank transferred ownership of a car worth $5,000, $250 of that transfer would be considered because the first $4,500 of the car's value was exempt and an additional $250 of the transferred asset would have been applied toward the $1,500 resource limit. The following chart will be used to determine the period of disqualification.

Amount in excess of the resource limit	Period of disqualification (months)
$0 to 249.99	1
250 to 999.99	3
1,000 to 2999.99	6
3,000 to 4,999.99	9
5,000 or more	12

(j) *Resources of nonhousehold and excluded household members*—(1) *Nonhousehold members.* The resources of nonhousehold members, as defined in § 273.1 (b)(1), shall not be counted as available to the household.

(2) *Excluded household members.* The resources of excluded household members, as defined in § 273.1 (b)(2), shall be counted as available to the remaining household members.

(91 Stat. 958 (7 U.S.C. 2011-2029); sec. 1, Pub. L. 97-98, 95 Stat. 1282 (7 U.S.C. 2012); 91 Stat. 958 (7 U.S.C. 2011-2029); sec. 112, 113 and 114 of Pub. L. 97-35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97-253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligiblity standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each July 1, to reflect the Feder-

al income poverty annual adjustment to the nonfarm poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in General Notices published in the FEDERAL REGISTER.

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include: (i) All wages and salaries of an employee. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered earned income to the extent that the payments actually substitute for wages or salaries. Special payments for work-related expenses in addition to the basic assistance payment shall be considered part of the assistance payment and not as additional compensation.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program and programs authorized by the Comprehensive Employment and Training Act, to the extent they are not a reimbursement.

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113 Stat., as amended) shall be considered earned income and subject to the earned income deduction prescribed in § 273.10(e)(1)(B), excluding payments made to those households specified in paragraph (c)(10)(iii) of this section.

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need except as provided in paragraph (b)(1)(i) of this section.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits and the like in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of paragraph (c) of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of paragraph (c) of this section.

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN, in accordance with § 273.6, or for being an ineligible alien, in accordance with § 273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

(4) For households containing sponsored aliens (as defined in § 273.11(h)(1)), unearned income shall also include that amount of the monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as unearned income in accordance with the procedures established in § 273.11(h), unless the sponsored alien is otherwise exempt from this provision in accordance with § 273.11(h). Actual money paid to the alien by the sponsor or the sponsor's spouse would not be considered income to the alien unless the amount paid exceeds the amount attributed. The amount paid that actually exceeds the amount attributed would be considered income to the alien in addition to the amount attributed to the alien.

(5) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section. However, moneys withheld from assistance from another program, as specified in § 273.11(j), for purposes of recouping from a household an overpayment which resulted from the household's intentional failure to comply with the other program's requirements shall be included as income.

(ii) Child support payments received by AFDC recipients which must be transferred to the agency administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden, and vendor payments. Money payments that are not payable directly to a household, but are paid to a third party for a household expense, are vendor payments and are excludable as follows:

(i) A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend, who is not a household member, pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Similarly, rent or mortgage payments made to landlords or mortgagees by the Department of Housing and Urban Development (HUD), or by State or local housing authorities, are other examples of vendor payments, and are also excluded. Payments by a government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

(ii) Payments in money that are not made to a third party, but are made directly to the household, are counted as income and are not excluded as a vendor payment, except that rent or housing subsidies paid to a landlord by HUD or its agents under the experimental housing allowance program in Green Bay, Wis., or South Bend, Ind., shall considered a vendor payment regardless of whether the payment is made directly to the landlord or paid to the landlord through the household.

(iii) Moneys that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for a household expense, shall be counted as income and not excluded as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would have to be paid to the household. Such funds include wages earned by a household member and therefore owed to the household, a public assistance grant to which a household is legally entitled, and support or alimony payments in amounts which legally must be paid to a household member. If an employer, agency, or former spouse who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments shall still be counted as income to the household. However, if an employer, agency, former spouse, or other person makes payments for household expenses to a third party from funds that are not owed to the household, these payments shall be excluded as vendor payments. The distinction is illustrated by the following examples:

(A) Wages earned by a household member that are garnisheed or diverted by an employer, and paid to a third party for a household's expenses, such as rent, shall be considered as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, this rent payment shall be excluded as a vendor payment. In addition, if the employer provides housing to an employee, the value of the housing shall not be counted as income.

(B) All or part of a public assistance grant which would normally be provided in a money payment to the household, but which is diverted to third parties or to a protective payee for purposes such as managing a household's expenses, shall be considered income to the household. However, payments by the State agency that would not normally be provided in a money payment to the household, and that are over and above normal public assistance grants, shall be excluded as a vendor payment if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

(C) Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household expense shall be considered as income. However, payments specified by the court order or other legally binding agreement to go directly to the third party rather than to the household, and support payments not required by a court order or other legally binding agreement (including payments in excess of amount specified in a court order or written agreement) which are paid to a third party rather than the household shall be excluded as a vendor payment, even if the household agrees to the arrangement.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(3) Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandato-

ry school fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformily charged to all students and, therefore, would not be excluded as mandatory fees.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. No portion of benefits provided under title IV-A of the Social Security Act, to the extent such benefit is attributed to an adjustment for work-related or child care expenses, shall be considered excludable under this provision. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, of food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive. Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(i) Reimbursements or flat allowances for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(ii) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(iii) Medical or dependent care reimbursements.

(iv) Reimbursements or allowances to students for specific education expenses, such as travel or books, but not allowances for normal living expenses, such as food, rent, or clothing. Portions of a general grant or scholarship must be specifically earmarked by the grantor for education expenses rather than for living expenses to be excludable as a reimbursement.

(v) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of children who are members of the household, who are students at least halftime, and who have not attained their 18th birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of

work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. These payments shall be counted as resources in the month received, in accordance with § 273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a));

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113) as amended. Payments under Title I of that Act (including payments from such Title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for a Vista or other Title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income. The FNS National Office shall keep FNS Regional Offices informed of any new programs created under Title I and II or changes in programs mentioned above so that they may alert State agencies.

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).

(v) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95-524).

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).

(vii) Earned income tax credits received as a result of Pub. L. 95-600, the Revenue Act of 1978 which are received before January 1, 1980.

(viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433).

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, section 5).

(11) Payments or allowances made under any Federal law for the purpose of providing energy assistance. In addition, any payments or allowances, including tax credits, under State or local law which are so designated and made for the purpose of providing energy assistance shall be excluded

from consideration as income, provided that FNS has approved the exclusion of such payments or allowances. Notification of FNS approval will contain a specific date on which it becomes effective, but in no case will that date be later than 30 days following FNS notification to the State agency. The payments shall include but not be limited to assistance which is combined in a single payment with public assistance (PA) or general assistance (GA). The State agency shall submit documentation to FNS to show that the State or local energy assistance to be excluded meets the purpose designation as follows:

(i) The State or local payments or allowances are made for the purpose of providing energy assistance to households. Some indicators of purpose are:

(A) The energy assistance is not limited to households which receive PA or GA;

(B) The energy assistance is provided only to households which actually incur home energy costs;

(C) If the energy assistance payments are made separately or combined with other assistance payments, such as PA or GA, the energy assistance results in an increase in total assistance to the household (not counting food stamps) when compared to the assistance level as of the first day of the State or local legislative session during which the energy assistance is authorized or increased;

(D) The energy assistance is based on studies, surveys, or reports evaluating home energy costs. The energy assistance levels should be directly tied to the findings of such studies, surveys, or reports; and

(E) The energy assistance payments are designated as such by the legislative body enacting them;

(ii) The payments or allowances are clearly designated, (A) in State or local law, or (B) in documentation supporting or accompanying the statute, as energy assistance, distinct from other assistance. If the designation is contained only in supporting documentation it must clearly reflect the intent of both chambers of a bicameral legislature or the intent of a majority of members of a town council or county board. Documentation that would show a majority intent of an enacting body could take the form of a legislative resolution, the preamble and body of county regulations, county or town ordinances, or similar measures that represent the wishes of an entire legislative body; and

(iii) The levels of State or local energy assistance payments or allowances are calculated based on the seasonal home energy needs of typical households over an aggregate period not exceeding six months per year. If the State or local energy assistance is actually provided over a period longer than this aggregate, then the State agency shall document the reasons why it is administratively infeasible or impracticable to provide the energy assistance within the aggregate period on which it is based. If the legislation enacting the energy assistance program requires calculation of the energy assistance payments on the basis of only *increased* seasonal home energy needs, such payments may be excluded.

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction.* The per household per month standard deduction amounts applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REGISTER.

(2) *Earned income deduction.* Eighteen percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction.

(3) *Excess medical deduction.* That portion of medical expenses in excess of $35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2. Spouses or other persons receiving benfits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based

on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

(i) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.

(ii) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State.

(iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible;

(iv) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible;

(v) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients;

(vi) Dentures, hearing aids, and prosthetics;

(vii) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(viii) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(ix) Reasonable cost of transportation and lodging to obtain medical treatment or services;

(x) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The State agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the State agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the State agency shall treat the cost as a medical expense.

(4) *Dependent care.* Payments for the actual costs for the care of a child or other dependents when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search), or attend training or pursue education which is preparatory to employment. The deduction amounts applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REGISTER.

(5) *Shelter costs.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1), (2), (3) and (4) of this section have been allowed. The shelter deduction alone, or in combination with the dependent care deduction in paragraph (d)(4) of this section shall not exceed the maximum limit established for the dependent care deduction. This is applicable unless the household contains a member who is elderly or disabled as defined in § 271.2. Such households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. The shelter deduction amount applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for use in Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REG-

ISTER. Shelter costs shall include only the following:

(i) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(ii) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(iii) The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

(iv) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(v) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(6) *Standard utility allowance.* (i) The State agency may elect to offer a standard utility allowance to households for use in calculating shelter costs. The State agency may establish either separate standard utility allowances for individual utility expenses or a single standard utility allowance which includes a heating or cooling component. A cooling cost is a verifiable utility expense relating to the operation of air conditioning systems or room air conditioners. The standard utility allowance which includes a heating or cooling component shall be available only to households which incur heating or cooling costs separately and apart from their rent or mortgage, including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. To be qualified, the household must be billed on a regular basis for its heating or cooling costs. A household which incurs cooling or heating fuel costs on an irregular basis but is otherwise eligible to use the standard allowance may continue to use the allowance between billing periods. A household which lives in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs shall not be permitted to use the standard utility allowance which includes a heating or cooling cost component. If a household is not entitled to the standard utility allowance, it may claim the actual utility expenses (for any utility identified in paragraph (d)(5)(iii) of this section) which it does pay separately.

(ii) The State agency may elect to develop either an annualized standard utility allowance or seasonal standard utility allowances. If the State agency elects to use a single annualized standard utility allowance it will not be required to seasonally adjust the budgets of qualified households which incur either heating or cooling costs. If the State agency elects to vary the allowance seasonally it shall ensure that during the heating season the allowance is provided only to households with heating costs, and that during the cooling season the allowance is provided only to households with cooling costs.

(iii) State agencies shall develop methodologies, subject to FNS approval, to be followed in establishing their standard utility allowances. The standard allowance(s) developed by the State agency shall be submitted to FNS for approval.

(iv) The State agency may establish separate standard allowances for the utilities defined in paragraph (d)(5)(iii) of this section or it may establish a single standard allowance.

(A) If the State agency establishes separate standard allowances, households which do not qualify for the standard allowance for heating and cooling costs may be allowed to use the other standard allowances

(B) If the State agency establishes a single standard allowance, it shall include the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection.

(C) The State agency may develop a method, subject to FNS approval, for calculating a mandatory telephone allowance for use in conjunction with a single utility allowance or as the standard allowance for the telephone if the State has separate standard allowances by utility. In States with a single utility allowance, the telephone allowance would apply to households which are not entitled to claim the overall standard, but which, nonetheless, incur separate telephone expenses. The State agency may mandate use of the telephone allowance even if actual telephone costs are higher.

(v) The State agency shall review and adjust the standard utility allowance(s) annually to reflect changes in the cost of utilities. The State agency may use data gathered through quality control sampling, surveys of utility company rates, or other methods for updating the standard utility allowance(s). The State agency may vary the size of the standard utility allowance to reflect differences such as seasonal cost changes or cost variations between geographical areas.

(vi) At the time of certification the household shall be advised that it may deduct its actual utility costs rather than the standard allowances (except as provided in paragraph (d)(6)(iv)(C) of this section for a telephone standard) throughout the certification period if the household can verify these costs. The State agency shall also advise the household of its right to switch as provided below. The State agency shall permit households to switch between actual utility costs and the utility standard at the time of recertification except in States in which an annualized standard utility allowance is used. In the latter States the household may not switch between the annualized standard utility allowance and actual costs for a period of twelve months following initial certification and no more frequently than once every twelve months thereafter.

(vii) If the household shares utility expenses with, and lives with, another individual not participating in the Food Stamp Program, another household participating in the Food Stamp Program, or both, the allowance shall be prorated among the household and the other individual, household, or both, *Provided*, That the State agency may, if it is unable to accurately determine the prorata share of utility costs paid by the parties, use the actual utility costs paid by each household. Under no circumstances shall the total amount of utility costs used to determine the amount of the deduction exceed the total amount of actual utility costs for the residence.

(7) *Adjustment of standard deduction.* (i) Effective October 1, 1983, the standard deductions shall be adjusted to reflect changes in the Consumer Price Index for all urban consumers (CPI-U) for items other than food and the homeownership component of shelter costs for the fifteen months ending March 31, 1983.

(ii) Effective October 1, 1984, the standard deductions shall be adjusted to reflect changes in the CPI-U for items other than food and the homeownership component of shelter costs for the fifteen months ending June 30, 1984.

(iii) Effective October 1, 1985, and each October 1 thereafter, the standard deductions shall be adjusted to reflect changes in the CPI-U for items other than food and the homeownership component of shelter costs for the twelve months ending the previous June 30.

(iv) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

(8) *Adjustment of shelter deduction.* (i) Effective October 1, 1983, the maximum limit for excess shelter expense

deductions shall be adjusted to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of the CPI-U for the fifteen months ending March 31, 1983.

(ii) Effective October 1, 1984, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of the CPI-U for the fifteen months ending June 30, 1984.

(iii) Effective October 1, 1985, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of the CPI-U for the twelve months ending the preceding June 30.

(iv) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

(91 Stat. 958 (7 U.S.C. 2011-2029); sec. 1, Pub. L. 97-98, 95 Stat. 1282 (7 U.S.C. 2012))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.9, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application*—(1) *Determination of eligibility and benefit levels.* (i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FNS, use a fiscal month if the State agency determines that it is more efficient and satisfies FNS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the Program.

(ii) A household's benefit level for the initial month of certification shall be based on the day of the month it applies for benefits. A household shall receive benefits prorated from the day of application to the end of the month. As used in this subsection, the term initial month means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation. However, if the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month. Recertification shall be processed in accordance with § 273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FNS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

$$\text{full month's benefits} \times \frac{(31 - \text{date of application})}{30} = \text{allotment}$$

(B) For State agencies which use the exact number of days in a month, the formula is:

$$\text{full month's benefits} \times \frac{(\text{number of days in month} + 1 - \text{date of application})}{\text{number of days in month}} = \text{allotment}$$

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower whole dollar. If the computation results in an allotment of less than $10, then no issuance shall be made for the initial month.

(iv) Those households which are entitled to expedited service as defined in § 273.2(i)(1), and which apply for benefits after the 15th of the month, shall be assigned certification periods in accordance with § 273.2(i)(4)(iii). However, the benefits for the month following the month of application shall not be issued until all necessary verification not already provided has been provided to the State agency. Migrant households eligible for expedited service and applying after the 15th of a month shall be certified in accordance with § 273.2(i)(4)(iii)(B). The State agency shall issue the second month's benefits in accordance with § 273.2(i)(4)(iii)(B).

(2) *Application for recertification.* Eligibility and the level of benefits for recertifications shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. If an application for recertification is submitted after the household's certification period has expired, then that application shall be considered an initial application and benefits for that month prorated in accordance with paragraph (a)(1)(ii) of this section. In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(3) *Anticipated changes.* Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) *Changes in allotment levels.* As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in

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paragraphs (c)(3) and (d)(3) of this section.

(b) *Determining resources.* Available resources at the time the household is interviewed shall be used to determine the household's eligibility.

(c) *Determining income*—(1) *Anticipating income.* (i) For the purpose of determing the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving State or Federal assistance payments, such as PA or GA benefits, SSI benefits or social security payments, on a recurring, monthly basis, shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one month and none in the next month.

(3) *Income averaging.* (i) Households, except destitute households, and PA households subject to a monthly reporting requirement, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs. To average income, the State agency shall use the household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the 2 known months may be averaged and projected over a certification period of longer than 2 months.

(ii) Households which, by contract or self-employment, derive their annual income in a perod of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, share croppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11.

(iii) Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided.

(d) *Determining deductions.* Deductible deductions include only certain dependent care, shelter, and medical costs as described in § 273.9.

(1) *Disallowed expenses.* (i) An expense covered by an excluded reimbursement or vendor payment shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. Households entitled to the medical deduction shall have the nonreimbursable portion considered at the time the amount of reimbursement is received or can otherwise be verified.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an inkind benefit, such as food.

(2) *Billed expenses.* Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which

covers a 3-month supply of fuel oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin the month the change would become effective.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period.

(5) *Conversion of deductions.* The income conversion procedures in paragraph (c)(2) of this section shall also apply to expenses billed on a weekly or biweekly basis.

(e) *Calculating net income and benefit levels*—(1) *Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income.

(B) Multiply the total gross monthly earned income by 18 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 82 percent and add that to the total monthly unearned income, minus income exclusions.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in § 273.9(d)(3), determine if total medical expenses exceed $35. If so, subtract that portion which exceeds $35.

(E) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed for the area. If dependent care costs equal or exceed the maximum amount allowed, the household's net monthly income has been determined unless the household is entitled to the full amount of its excess shelter deduction. If the dependent care expenses are less than the maximum, or if the household is entitled to the full amount of its excess shelter expenses (that portion over 50 percent of its monthly net income under § 273.9(d)(5)), compute the household's excess shelter expenses in accordance with paragraph (e)(1)(i)(F) of this section.

(F) Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(G) of this section.

(G) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. The maximum amount allowed for shelter (for those households subject to a shelter maximum) is the maximum used in paragraph (e)(1)(i)(E) of this section minus the amount of dependent care expenses, if any. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the State agency shall use one of the following two procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or

(B) Apply the rounding procedure that is currently in effect for the State's Aid to Families with Dependent Children (AFDC) program. If the State AFDC program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

(2) *Eligibility and benefits.* (i)(A) All households shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) In addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, the gross and/or net income to the corresponding income eligibility standard in accordance with § 273.9(a) (1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the Thrifty Food Plan for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(*1*) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(*2*) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down the nearest lower dollar.

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than $10 for the household, no benefits shall be issued to the household for the initial month.

(C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments of $10 and all eligible households with three or more members which are entitled to $1, $3, and $5 allotments shall receive allotments, of $2, $4, and $6, respectively, to correspond with current coupon book determinations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) and the provision precluding issuances of less than $10 in an initial month of paragraph (e)(2)(ii)(B)) of this section:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(*1*) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(*2*) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(*3*) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(*4*) The household shall retain the right to submit a new application while it is suspended.

(*5*) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(*6*) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a change, in accordance with paragraph (a)(1) of this section.

(*7*) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(*8*) Whether a household member registers for work at the time of application or when the household is determined to be entitled to benefits, the State agency shall submit the member's work registration form to the State Employment Security Agency (SESA) within five days after the household is determined to be entitled to benefits.

(*9*) The household shall not be subject to the job search requirements of § 273.7(f) until it has been determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) or (e)(2)(ii)(B) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible households shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the Thrifty Food Plan amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the Thrifty Food Plan amounts by the percentage specified in the FNS notice; if the result ends in 1 through 99 cents, round the result up to the nearest higher dollar; and subtract the result from the normal Thrifty Food Plan amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in paragraph (e)(2)(ii) of this section and substitute the reduced Thrifty Food Plan amounts for the normal Thrifty Food Plan amounts.

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, if the amount of benefits obtained by the calculation in paragraph (e)(2)(ii)(A) of this section is less than $10 for one- and two-person households only, the household shall be provided a minimum benefit of $10.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for households with one or two members only may be disregarded and all households may have their benefits lowered by reducing Thrifty Food Plan amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for a $10 minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FNS.

(3) *Destitute households.* Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) If income is received on a monthly or more frequent basis, it shall be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than $25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than $25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than $25 from the new source will not be received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer, on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(vii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than $25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(4) *Thrifty Food Plan*—(i) *Level of the Thrifty Food Plan.* The Thrifty Food Plan shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The Thrifty Food Plan for Hawaii shall be the Thrifty Food Plan for the 48 States and D.C., adjusted for the price of food in Honolulu. The plans for urban and rural parts of Alaska shall be the Thrifty Food Plan for the 48 States and D.C. adjusted by the price of food in Anchorage and further adjusted for urban and rural Alaska as defined in § 272.7(c). The Thrifty Food Plans for Guam and the Virgin Islands shall be adjusted for changes in cost of food in the 48 States and D.C., provided that the costs of these plans may not exceed the cost of the highest Thrifty Food Plan for the 50 States. The Thrifty Food Plan amounts in each area are adjusted annually and will be prescribed in General Notice published in the FEDERAL REGISTER.

(ii) *Adjustment.* (A) Effective October 1, 1982, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twenty-one month period ending June 30, 1982, less one percent of the adjusted Thrifty Food Plan.

(B) Effective October 1, 1983, and October 1, 1984, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30, less one percent of the adjusted Thrifty Food Plan.

(C) Effective October 1, 1985, and each October 1 thereafter, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30.

(f) *Certification periods.* The State agency shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification as required by § 273.2(f). Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

(1) Certification periods shall conform to calendar months, except where FNS has approved the use of fiscal months. At initial application, the first month in the certification period shall generally be the month of application, even if the household's eligibility is not determined until a subsequent month. For example, if a household files an application in January and the application is not processed until February, a 6-month certification period would include January through June. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(2) Households in which all members are contained in a single PA grant, or in a single GA grant where GA and food stamp applications are processed jointly in accordance with § 273.2(j), should have their food stamp recertifications, to the extent possible, at the same time they are redetermined for PA/GA. State agencies shall assign these households certification periods in accordance with this section. If such households do have their food stamp recertifications scheduled for the same time as their PA/GA redetermination, and the PA/GA redeterminations are not completed timely, the State agency shall ensure that the food stamp recertifications are timely completed. In no event shall food stamp benefits be continued beyond the end of a certification period.

(3) Households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least 3 months, except as follows:

(i) Households eligible for a certification period of 3 months or less shall, at the time of certification, have their certification periods increased by 1 month, if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant the longer certification period. For example, if a household which is eligible for a 3-month certification period makes application in June and is not certified until late June or early July, the certification period would include June through September.

(ii) Households shall be certified for 1 or 2 months, as appropriate, when the household cannot reasonably predict what its circumstances will be in the near future, or when there is a substantial likelihood of frequent and significant changes in income or household status; for example, day laborers and migrant workers if income is uncertain and subject to large fluctuations during the work season due to the uncertainty of continuous employment or due to bad weather and other circumstances.

(iii) If a State agency opts to effect the Social Security/SSI cost-of-living increase through the process of recertification, the affected cases shall be assigned certification periods that ensure that they are due for recertification in accordance with § 273.12(e)(3)(ii). Households entitled to a certification period of up to 12 months as discussed in paragraph (f)(5) of this section shall, on a one-time basis, be certified for less than a year in order to comply with this provision.

(4) Households shall be certified for up to 6 months if there is little likeli-

hood of changes in income and household status; for example, households with a stable income record and for which major changes in income, deductions, or composition are not anticipated.

(5) Households consisting entirely of unemployable or elderly persons with very stable income shall be certified for up to 12 months provided other household circumstances are expected to remain stable; for example, social security recipients, SSI recipients and persons who receive pensions or disability payments.

(6) Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer shall be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farmworkers who are provided their annual salaries on a scheduled monthly basis which does not change as the amount of work changes.

(g) *Certification notices to households.* (1) *Initial applications.* State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility.* (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office, and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(C) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office, and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. In cases where the State agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h) (2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) *Applications for recertification.* The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

(3) *Identification (ID) cards.* The State agency shall issue an ID card to each certified household as proof of program eligibility. Areas designated by FNS for the mandatory use of photo ID cards shall follow the requirements of paragraphs (g)(3) (i) and (ii) and (iv) of this section. Areas not designated by FNS for the mandated use of photo ID's shall follow the requirements of paragraphs (g)(3) (i), (iii) and (iv) of this section.

(i) *General provisions.* (A) All ID cards shall be issued in the name of the household member who is authorized to receive the household's issuance. Photo ID cards shall contain the photograph of the person who will receive the household's issuance; i.e., who will either transact the household's ATP card or, in an HIR system, pick up the household's allotment. A photo ID card shall be signed by the person pictured on the card, be it the household member or authorized representative designated to pick up the household's allotment. A nonphoto ID card shall be signed by the household member in whose name it is issued and by other persons designated on the ID as authorized to pick up the allotment, whether it is another household member or authorized representative.

(B) The State agency shall limit issuance of ID cards to the time of initial certification, with replacements made only in instances of loss, mutilation, destruction, or changes in the person authorized to obtain coupons, or where the State agency determines that new ID cards are needed to keep the photographs up-to-date or is otherwise changing its ID card format or system. Whenever possible, the State agency shall collect the ID card that it is replacing.

(C) The State agency shall place an expiration date on those ID cards issued to households certified for delivered meals for a temporary period. The State agency shall also place an expiration date on those nonphoto ID cards that are issued in accordance with § 273.10(g)(3)(ii)(B)(*3*) to households eligible for expedited service.

(D) ID cards delivered to households by mail shall not be mailed in the same envelope with the ATP or coupons.

(ii) *Mandatory photo ID cards.* (A) FNS mandates the use of photo ID cards in those project areas or portions thereof with 100,000 or more food stamp participants, except for those project areas serviced entirely by mail issuance, or where FNS, in consultation with the Office of the Inspector General, approves a State agency's request for an exemption. FNS shall respond to a State agency's request within 30 days of its receipt of the request. FNS will evaluate the January participation data reported as an attachment to the March FNS-388 report. Based on the analysis, FNS will notify State agencies at the beginning of each fiscal year of any areas that either require or no longer require the use of photo ID cards. In cases where an entire State is a single project area, FNS shall consult with the State agency to determine whether photo ID's should be required in any specific parts of the project area. At the conclusion of this consultation, FNS shall inform the State agency of whether it is mandating the use of photo ID's in any parts of the State. In cases where a project area serves between 100,000 and 110,000 participants, FNS shall inform the State agency in which the project area is located that it is prepared to mandate the use of photo ID's in the project area. FNS shall also inform the State agency that it will not mandate their use if within 30 days the State agency demonstrates to FNS that participation in the project areas has fallen below the 100,000 participant level in the recent past or justifies to FNS why participation is likely to fall below that level during the next year. In addition, FNS, in consultation with the Office of the Inspector General, may designate at any time project areas or portions thereof with less than 100,000 participants as requiring the use of photo ID cards if, in reviewing such factors as the level of duplicate issuances and results of management evaluation reviews, the Department determines that the institution of photo ID cards would be justified. A State agency may request that FNS designate that photo ID's be mandated throughout either the entire State or specific project areas. FNS shall respond to such requests within 30 days and, if the request if not approved, FNS shall justify its reasons for the disapproval to the State agency.

(B) In project areas where photo ID cards are mandatory, the State agency shall issue a photo ID card to each eligible household at the time of certification, except for the following:

(*1*) Households certified by out-of-office interviews as specified in § 273.2(e)(2). However, the State agency should attempt to replace the nonphoto ID card issued to these households with a photo ID card if and when the appropriate household member or authorized representative is in the office for any other reason. The State agency shall not require such households to make a special trip into the office solely for the purpose of issuing a photo ID card.

(*2*) Households whose religion does not allow them to be photographed. The State agency shall require such a household to provide a signed statement to the effect that their religious beliefs do not allow them to be photographed.

(*3*) Households entitled to expedited service if the State agency's photo ID card system is incapable of producing a photo ID card in time for the household to participate as required by § 273.2(i). A photo ID card shall be obtained prior to issuance of the household's next allotment.

(*4*) Households certified under the SSI-food stamp joint processing rules in § 273.2(k). State agencies shall not require these households to obtain photo ID's as long as they continue to be certified for food stamps at SSA offices. State agencies shall, however, require a household to obtain a photo ID if a household member or authorized representative reports to the food stamp office in order to be recertified.

(*5*) Residents of drug/alcoholic treatment and rehabilitation programs.

(C) Mandated photo ID cards shall be serially numbered, laminated after signature by the person photographed, include a color photograph of the person designated by the household to obtain coupons, and contain the household's case number or other identifying information. A photo ID card used in another program may be adapted for food stamp purposes if it meets these specifications and can be annotated to indicate food stamp eligibility. Households exempt from mandated photo ID cards shall be issued ID cards which also meet these specifications except that in lieu of a photograph the State agency shall annotate the cards to show an exception was granted to the household and that the ID card is valid. FNS shall waive one or more of the requirements for the food stamp photo ID if a State agency is able to demonstrate to FNS that its alternate ID card or system will provide adequate safeguards against fraudulent and duplicate issuances. All photo ID cards shall be subject to FNS approval.

(D) A household subject to the mandatory photo ID card requirement shall not participate until such time as a household member or a designated authorized representative complies. If a designated authorized representative does not comply, the household may designate a household member or another authorized representative to be photographed. Only the signature of the person photographed shall be on the photo ID card and only that person may obtain the household's coupons. If, at a later date, the person who is photographed is unable to travel to the issuance point to obtain a particular allotment, the household may use the emergency authorized representative procedures provided in §§ 273.1(f)(1)(ii), 274.2(e)(7), and 274.2(f)(3). In addition, State agencies which have the capability may develop systems to issue more than one photo ID card to households needing either an additional household member, or an authorized representative as well as a household member, authorized to obtain coupons. These systems must ensure that the safeguards provided by photo ID cards are maintained.

(E) If a mutilated or altered photo ID card is presented at the issuance point, the household shall obtain a replacement photo ID card prior to issuance. If a household's opportunity to participate expires between the time the household requested a replacement photo ID card and the delivery of that card to the household, the household shall be entitled to benefits lost as a result of not being able to obtain that particular allotment.

(F) The State agency shall provide households with reasonable access to food stamp photo ID's in project areas where their use is mandated.

(iii) *Nonphoto ID card areas.* In areas not designated by FNS as requiring photo ID cards, the ID card shall contain space for the name and signature of the household member to whom the coupon allotment is to be issued and for any authorized representatives designated by the household. All persons listed on the ID card shall sign the card prior to its use. If the household does not name an authorized representative, the State agency shall void that area of the ID card to prevent names and signatures being entered at a later date. The ID card may be serially numbered at the State agency's option.

(iv) *Specially marked ID cards.* Specially marked ID cards shall be issued as follows:

(A) Any household eligible for and interested in using delivered meal services shall receive an ID card marked with the letter "M."

(B) Any household eligible for and interested in using communal dining facilities shall receive an ID card marked with the letters "CD" in those States or project areas where restaurants are authorized to accept food stamps. In areas where restaurants are not authorized to accept food stamps, the State or project area has the option of marking the ID with the letters "CD."

(C) Any household residing in a remote section of Alaska which has been determined by FNS to be an area in which food coupons may be used to purchase hunting and fishing equipment shall receive an ID card marked with the letters "HF."

(91 Stat 958 (7 U.S.C. 2011-2029); sec. 1, Pub. L. 97-98, 95 Stat. 1282 (7 U.S.C. 2012))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.10, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* The procedures for handling income received from boarders by a household that does not own and operate a commercial boardinghouse are described in paragraph (b) of this section. For all other households receiving self-employment income, including those households that own and operate a commercial boardinghouse, the State agency shall calculate the self-employment income as follows:

(1) *Annualizing self-employment income.* (i) Self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income is intended to support the farmer on an annual basis. This self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment.

(ii) Self-employment income which is received on a monthly basis but which represents a household's annual support shall normally be averaged over a 12-month period. If, however, the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income based on anticipated earnings.

(iii) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(iv) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise shall be averaged over the period of time the business has been in operation, and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income (including capital gains), exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

(ii) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, the State agency shall add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. The State agency shall then add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

(iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 18-percent earned income deduction, shall then be added to all monthly unearned income received by the household. The standard deduction, dependent care, and shelter costs shall be computed as for any other household and subtracted to determine the monthly net income of the household.

(iv) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment shall be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency shall count the full amount of the capital gain as income for food stamp purposes.

(4) *Allowable costs of producing self-employment income.* (i) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizer, interest paid to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(ii) In determining net self-employment income, the following items shall not be allowable as costs of doing business:

(A) Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

(B) Net losses from previous periods;

(C) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 18-percent earned income deduction specified in § 273.9(d)(2); and

(D) Depreciation.

(5) *Assigning certification periods.* (i) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. For those households that receive other sources of income or whose self-employment income is intended to cover a period of time that is less than a year, the State agency shall assign a certification period appropriate for the household's circumstances.

(ii) For those self-employed households that receive their annual income in a short period of time, the initial certification period shall be assigned to bring the household into the annual cycle. For example, the State agency may provide for recertification at the time the household normally receives all or a majority of its annual income or the State agency may prefer to have the annual cycle coincide with the filing of the household's income tax.

(b) *Boarders*—(1) *Household with boarders.* Persons paying a reasonable amount for room and board as specified in § 273.1(b) shall be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boardinghouse shall be handled as described in paragraph (a) of this section. For all other households, payments from the boarder shall be treated as self-employment income and the household's eligibility determined as follows:

(i) *Income from the boarder.* The income from boarders shall include all direct payments to the household for room and meals, including contributions to the household's shelter expenses. Shelter expenses paid directly by boarders to someone outside of the household shall not be counted as income to the household.

(ii) *Cost of doing business.* After determining the income received from the boarders, the State agency shall exclude that portion of the boarder payment which is a cost of doing business. The cost of doing business shall be equal to either of the following procedures provided that the amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals:

(A) The cost of the thrifty food plan for a household size that is equal to the number of boarders; or

(B) The actual documented cost of providing room and meals, if the actual cost exceeds the appropriate thrifty food plan. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded.

(iii) *Deductible expenses.* The net income from self-employment shall be added to other earned income and the 18-percent earned income deduction shall be applied to the total. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

(c) *Treatment of income and resources of excluded members.* Individual household members may be excluded for being ineligible aliens, because of disqualification for failure or refusal to obtain or provide an SSN, or for intentional Program violation, or due to the imposition of a sanction while they were participating in a household disqualified for failing to comply with workfare requirements. During the period of time that such household members are ineligible, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Excluded for intentional Program violation disqualification or workfare sanction.* The eligibility and benefit level of any remaining household members of a household containing individuals excluded because of disqualification for intentional Program violation or imposition of a sanction while they were participating in a household disqualified for failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the excluded household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The excluded member shall not be included when determining the household's size for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits. The State agency shall ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

(2) *Excluded for others causes.* The eligibility and benefit level of any remaining household members of a household containing individuals excluded for being an ineligible alien or because of disqualification for refusal to obtain or provide an SSN shall be determined as follows:

(i) *Resources.* The resources of such excluded members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such excluded members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the excluded member's income and dividing the income evenly among the household members, including the excluded members. All but the excluded members' share is counted as income for the remaining household members.

(iii) *Deductible expenses.* The 18 percent earned income deduction shall apply to the prorated income earned by such excluded members which is attributed to their households. That portion of the households' allowable shelter and dependent care expenses which are either paid by or billed to the excluded members shall be divided evenly among the households' members including the excluded members. All but the excluded members' share is counted as a deductible shelter expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such excluded members shall not be included when determining their households' sizes for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits.

(3) *Reduction or termination of benefits within the certification period.* Whenever an individual is excluded within the household's certification period, the State agency shall determine the eligibilty or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Excluded for intentional Program violation disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(ii) *Excluded for other causes.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is an ineligible alien, was sanctioned while they were participating in a household disqualified for failure to comply with workfare requirements, or was disqualified for refusal to obtain or provide an SSN, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the exclusion, the reason for the exclusion, the eligibility and benefit level of the remaining members, and the actions the household must take to end the exclusion.

(d) *Treatment of income and resources of other nonhousehold members.* (1) For those nonhousehold members that have not been disqualified, such as SSI recipients in cash-out States, the income and resources of the nonhousehold member shall not be considered available to the household. Cash payments from the nonhousehold member to the household will be considered income under the normal income standards set in § 273.9(b). Vendor payments, as defined in § 273.9(c)(1), shall be excluded as income. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

(2) When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

(i) If the household's share can be identified, the State agency shall count that portion due to the household as earned income.

(ii) If the household's share cannot be identified the State agency shall prorate the earned income among all those whom it was intended to cover and count that prorated portion to the household.

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotics addicts or alcoholics who regularly participate in drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(2). The guidelines for issuing FNS authorizations to these treatment centers are set forth in § 278.1(e). Prior to certifying any residents for food stamps, the State agency shall verify that the treatment center is authorized by FNS as a retailer or is certified by the appropriate agency or agencies of the State (as defined in § 271.2), including that agency's or agencies' determination that the center is a nonprofit organization.

(2) Each treatment and rehabilitation center shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State agency shall require the list on either a monthly or semimonthly basis. In addition, the State agency shall conduct periodic random onsite visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The following provisions apply to residents of treatment centers:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and documentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The treatment center shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and of when the addict or alcoholic leaves the treatment center. The treatment center shall return a household's ATP or coupons received after the household has left the center.

(5)(i) When the household leaves the center, the center shall provide the resident household with its ID card and any untransacted ATP cards. The household, not the center, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. The departing household shall also receive its full allotment if already issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the treatment and rehabilitation program prior to the 16th day of the month, the treatment center shall provide the household with one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons.

(ii) Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The center, if possible, shall provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The treatment center shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the individual with the coupons or they left on or after the 16th of the month.

(6) The organization or institution shall be responsible for any misrepresentation or fraud which it knowingly commits in the certification of center

residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution authorized by FNS as a retail food store may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FNS when it has reason to believe that an organization or institution is misusing coupons in its possession. However, the State agency shall take no action prior to FNS action against the organization or institution. The State agency shall establish a claim for overissuances of food coupons held on behalf of resident clients as stipulated in paragraph (e)(6) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. If FNS disqualifies an organization or institution as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period. If the treatment center loses its authorization from FNS to accept and redeem coupons, or is no longer certified by the responsible agencies of the State, its residents are no longer eligible to participate. The residents are not entitled to a notice of adverse action but shall receive a written notice explaining the termination and when it will become effective.

(f) *Residents of group living arrangement who receive benefits under Title II or Title XVI of the Social Security Act.* (1) Disabled or blind residents of a group living arrangement (as defined in § 271.2) who receive benefits under Title II or Title XVI of the Social Security Act may voluntarily apply for the Food Stamp Program. If these residents apply through the use of the facility's authorized representative, their eligibility shall be determined as one-person households. If the residents apply on their own behalf, the household size shall be in accordance with the definition in § 273.1. The State agency shall certify these residents using the same provisions that apply to all other households. Prior to certifying any residents for food stamps, the State agency shall verify that the group living arrangement is authorized by FNS or is certified by the appropriate agency or agencies of the State (as defined in § 271.2) including that agency's (or agencies') determination that the center is a nonprofit organization.

(2) Each group living arrangement shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The same provisions applicable in § 273.11(e)(3) to residents of treatment centers also apply to blind or disabled residents of group living arrangements who receive benefits under Title II or Title XVI of the Social Security Act when the facility acts as the resident's authorized representative.

(4) If the resident has made application on his/her own behalf, the household is responsible for reporting changes to the State agency as provided in § 273.12(a). If the group living arrangement is acting in the capacity of an authorized representative, the group living arrangement shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and when the individual leaves the group living arrangement. The group living arrangement shall return any household's ATP card or coupons to the State agency if they are received after the household has left the group living arrangement.

(5)(i) When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the coupons on behalf of the residents (regardless of the method of application), shall provide residents with their ID cards (if applicable) and any untransacted ATP cards. The household, not the group living arrangement, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. Also, the departing household shall receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the group living arrangement prior to the 16th day of the month, the facility shall provide the household with its ID card (if applicable) and one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents shall be given a pro rata share of one-half of the coupon allotment if leaving prior to the 16th day of the month and shall be instructed to obtain ID cards or written authorizations to use the coupons from the local office.

(ii) Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. The group living arrangement, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The group living arrangement shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with the coupons.

(6) The same provisions applicable to drug and alcoholic treatment center in paragraphs (e) (6) and (7) of this section also apply to group living arrangements when acting as an authorized representative. These provisions, however, are not applicable if a resident has applied on his/her own behalf. The resident applying on his/her own behalf shall be responsible for overissuances as would any other household as discussed in § 273.18.

(7) The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the group living arrangement services or if meals are prepared at a central location for delivery to the individual residents. If residents purchase and/or prepare food for home consumption, as opposed to communal dining, the group living arrangement shall ensure that each resident's food stamps are used for meals intended for that resident. If the resident retains use of his/her own coupon allotment, he/she may either use the coupons to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

(g) *Shelters for battered women and children.* (1) Prior to certifying its residents under this paragraph, the State agency shall determine that the shelter for battered women and children meets the definition in § 271.2 and document the basis of this determination. Shelters having FNS authorization to redeem at wholesalers shall be considered as meeting the definition and the State agency is not required to make any further determination. The State agency may choose to require local project area offices to maintain a list of shelters meeting the definition to facilitate prompt certification of eligible residents following the special procedures outlined below.

(2) Many shelter residents have recently left a household containing the person who has abused them. Their former household may be certified for participation in the Program, and its certification may be based on a house-

hold size that includes the women and children who have just left. Shelter residents who are included in such certified households may nevertheless apply for and (if otherwise eligible) participate in the Program as separate households if such certified household which includes them is the household containing the person who subjected them to abuse. Shelter residents who are included in such certified households may receive an additional allotment as a separate household only once a month.

(3) Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible in accordance with § 273.8. Room payments to the shelter shall be considered as shelter expenses.

(4) Any shelter residents eligible for expedited service shall be handled in accordance with § 273.2(i).

(5) State agencies shall take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action shall include either shortening the certification period by issuing a notice of expiration in accordance with § 273.14(b) to the former household of shelter residents or acting on the reported change in accordance with § 273.12 by issuing a notice of adverse action in accordance with § 273.13.

(h) *Households containing sponsored alien members.* (1) *Definitions.* "Sponsored alien" means those aliens lawfully admitted for permanent residence into the United States as described in § 273.4(a)(2). "Sponsor" means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident. "Date of entry" or "Date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(2) *Deeming of sponsor's income and resources as that of the sponsored alien.* Portions of the gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the unearned income and resources of a sponsored alien for three years following the alien's admission for permanent residence to the United States. The spouse's income and resources will be counted even if the sponsor and spouse were married after the signing of the agreement.

(i) The monthly income of the sponsor and sponsor's spouse deemed to be that of the alien shall be the total monthly earned and unearned income of the sponsor and the sponsor's spouse (if living with the sponsor) at the time the household containing the sponsored alien member applies or is recertified for Program participation, reduced by an 18 percent earned income amount for that portion of income determined as earned income of the sponsor and the sponsor's spouse, and the FSP monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed by the sponsor or sponsor's spouse as a dependent for Federal income tax purposes. If the alien has already reported gross income information on his/her sponsor due to AFDC's sponsored alien rules, that income amount may be used for FSP deeming purposes. However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien, shall be limited to the 18 percent earned income amount and the FSP gross monthly income amount stated above.

(ii) Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount attributed to the alien under paragraph (h)(2)(i) of this section. Only the amount paid that actually exceeds the amount deemed would be considered income to the alien.

(iii) Resources of the sponsor and sponsor's spouse to be deemed to be that of the alien shall be the total amount of their resources as determined in accordance with § 273.8, reduced by $1,500. If the alien has already reported total resource information on his/her sponsor due to AFDC's sponsored alien rules, the resource amount calculated by AFDC as the amount to be attributed to the alien may be used for FSP deeming purposes.

(iv) The amount of income and resources deemed to be that of the sponsored alien in accordance with paragraphs (h)(2) (i) and (iii) of this section, shall be considered in determining the eligibility and benefit level of the household of which the alien is a member.

(v) If a sponsored alien can demonstrate to the State agency's satisfaction that his/her sponsor sponsors other aliens, then the income and resources deemed under the provisions of paragraphs (h)(2) (i) and (iii) of this section shall be divided by the number of such aliens that apply for or are participating in the program.

(vi) If the alien switches sponsors during the certification period, then deemed income/resources would be recalculated based on the required information about the new sponsor as soon as possible after the information is supplied by the alien and verified by the State agency.

(3) *Exempt aliens.* The provisions of this paragraph do not apply to:

(i) An alien who is participating in the Food Stamp Program as a member of his or her sponsor's household;

(ii) An alien who is sponsored by an organization or group as opposed to an individual;

(iii) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as, but not limited to, a refugee, a parolee, one granted asylum, and a Cuban or Haitian entrant.

(4) *Sponsored alien's responsibility.* The sponsored alien and his/her spouse are responsible for providing the State agency with any information or documentation necessary to determine the income and resources of the alien's sponsor and the sponsor's spouse for three years from the alien's date of entry or date of admission as a lawful permanent resident. The alien and his/her spouse shall also be responsible for demonstrating to the State agency that the sponsor also sponsors other aliens and how many and for obtaining any necessary cooperation from the sponsor.

(5) *Verification.* (i) The State agency shall obtain from the alien or alien's spouse the following information:

(A) The income and resources of the alien's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the alien's application for food stamp assistance.

(B) The number of other aliens for whom the sponsor has signed an affidavit of support or similar agreement.

(C) The provision of the Immigration and Nationality Act under which the alien was admitted.

(D) The date of the alien's entry or admission as a lawful permanent resident as established by INS.

(E) The alien's date of birth, place of birth, and alien registration number.

(F) The number of dependent's for Federal income tax purposes of the sponsor and the sponsor's spouse.

(G) The name, address and phone number of the alien's sponsor.

(ii) The State agency shall verify the information obtained in accordance with paragraphs (h)(5) (i)(A) and (i)(B) of this section. The State agency shall verify all other information which the State agency determines is questionable and which affects household eligibility and benefit level in accordance with procedures established in § 273.2(f)(2) for verifying questionable information.

(6) *Awaiting verification.* If information necessary to carry out the provisions of paragraph (h)(2) of this section is not received or verified on a timely basis, the sponsored alien and his/her spouse shall be ineligible until such time as all necessary facts are obtained. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible alien and his/her spouse (excluding the attributed income and resources of the alien's sponsor and sponsor's spouse) shall be treated in the same manner as a disqualified member as set forth in paragraph (c) of this section, and considered available in determining the eligibility and

benefit level of the remaining household members. If the information or verification is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12.

(7) *Memorandum of agreement.* The Secretary shall enter into an agreement with the Secretary of State and the Attorney General whereby they shall inform any sponsor of an alien and the alien, at the time the sponsor executes an affidavit of support or similar agreement on behalf of an alien, of the requirements of section 1308 of Pub. L. 97-98. Under the agreement the Bureau of Consular Affairs of the State Department and local INS offices shall provide information to State agencies that is needed to carry out the provisions of this paragraph. This agreement shall set forth the specific information that must be released by all parties to facilitate identification of the alien and sponsor and enable State agencies to perform required verification of information supplied by the alien which is essential for eligibility determinations, as specified in paragraph (h)(5) of this section.

(8) *Overissuance due to incorrect sponsor information.* (i) Any sponsor of an alien and alien shall be jointly and severably liable for repayment of any overissuance of coupons as a result of incorrect information provided by the sponsor. However, if the alien's sponsor had good cause or was without fault for supplying the incorrect information, the alien's household shall be solely liable for repayment of the overissuance. The State agency shall establish procedures for determining good cause under this provision, and shall include such procedures in its State Plan of Operation.

(ii) Where the sponsor did not have good cause, the State agency shall decide whether to establish a claim for the overissuance against the sponsor or the alien's household, or both. The State agency may choose to establish claims against both parties at the same time or to establish a claim against the party it deems most likely to repay first. If a claim is established against the alien's sponsor first, the State agency shall ensure that a claim is established against the alien's household whenever the sponsor fails to respond to the State agency's demand letter within 30 days of receipt. The State agency shall return to the alien's sponsor and/or the alien's household any amounts repaid in excess of the total amount of the claim.

(iii) *Collecting claims against sponsors.* (A) State agencies shall initiate collection action by sending the alien's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the sponsor may pay the claim. The sponsor shall also be informed that the sponsor will not be held responsible for repayment of the claim if the sponsor can demonstrate that he/she had good cause or was without fault for the incorrect information having been supplied to the State agency. In addition, the State agency shall follow-up the written demand letter with personal contact, if possible.

(B) The State agency may pursue other collection actions, as appropriate, to obtain payment of a claim against any sponsor which fails to respond to a written demand letter. The State agency may terminate collection action against a sponsor at any time if it has documentation that the sponsor cannot be located or when the cost of further collection is likely to exceed the amount that can be recovered.

(C) If the alien's sponsor responds to the written demand letter and is financially able to pay the claim at one time, the State agency shall collect a lumpsum cash payment. The State agency may negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are provided in regular installments. Payments shall be submitted to FNS in accordance with the procedures specified in § 273.18(h). For submission to FNS, any funds collected from the sponsor shall be reported and the State agency's retention shall be based on whether the corresponding claim against the alien's household is being treated as an inadvertent household error claim or intentional misrepresentation or fraud claim.

(iv) *Collecting claims against alien households.* Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information having been supplied concerning the alien's sponsor or sponsor's spouse, the State agency shall determine whether such incorrect information was supplied due to inadvertent error or intentional misrepresentation or fraud on the part of the alien. If sufficient documentary evidence exists to substantiate that the incorrect information concerning the alien's sponsor or sponsor's spouse was provided due to intentional misrepresentation or fraud on the part of the alien, the State agency shall pursue the case in accordance with the procedures specified in § 273.16 for misrepresentation and fraud disqualifications. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional misrepresentation or fraud by and administrative disqualification hearing official or a court of appropriate jurisdiction. If the State agency determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with the procedures specified in § 273.18. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

(i) *Households requesting replacement allotments or ATP's*—(1) *Coupons destroyed after receipt.* A household may request a replacement for that portion of its allotment, not to exceed one month's food stamp allotment, which it had received but which was subsequently destroyed in a household disaster such as fire or flood. Replacements of coupons stolen or lost in the mail prior to receipt are handled under § 274.3(c).

(i) To qualify for a replacement the household shall report the destruction to the local food stamp office within 10 days of the incident or within the period of intended use, whichever is earlier, and sign a statement (A) attesting to the destruction of the household's food stamps, (B) stating that the original coupons will be returned to the State agency if recovered by the household, and (C) stating that the household is aware of the penalties for intentional misrepresentation of the facts. The statement shall be retained in the casefile.

(ii) Upon receiving a request for replacement of coupons reported as destroyed in an individual household disaster, the State agency shall:

(A) Verify the disaster through either a collateral contact, documentation from a community agency including, but not limited to, the Fire Department or the Red Cross, or a home visit;

(B) Examine the casefile for notation of previous requests by the household for replacement of coupons or ATP's reported destroyed subsequent to receipt. Replacement of coupons reported as destroyed subsequent to receipt shall be made only once in a 6-month period. If, in the previous 5 months, the household has been issued a replacement for either coupons or an ATP reported as destroyed subsequent to receipt, then replacement shall be denied;

(C) Issue replacement coupons, if warranted, within 10 days of receipt of request for replacement; and,

(D) Indicate in the casefile that a replacement has been provided.

(2) *ATP's stolen or destroyed after receipt.* A household may request replacement for an ATP, which it had received but which was subsequently destroyed in a household disaster such as a fire or flood or stolen. Replacements of ATP's stolen or lost in the mail prior to receipt are handled under § 274.2(h).

(i) To qualify for a replacement the household shall report the theft or destruction to the local food stamp office within 10 days of the incident or within the period of the ATP's intended use, whichever is earlier. The household shall sign a statement (A) attesting to the theft or destruction of the household's ATP, (B) stating that the original ATP will be returned to the State agency if recovered by the household, and (C) stating that the household is aware of the penalties for intentional misrepresentation of the facts. The statement shall be retained in the casefile.

(ii) Upon receiving a request for replacement of an ATP reported as destroyed in an individual household disaster or stolen the State agency shall:

(A) Determine, to the maximum extent practicable, the legitimacy of the request for replacement of the destroyed or stolen ATP (through such means as determining whether the original ATP has been transacted, and, if so, whether the signature on the original ATP matches that on the request for a replacement);

(B) Verify the disaster through either a collateral contact, a community agency including, but not limited to, the Fire Department or the Red Cross, or a home visit;

(C) Determine if the ATP was valid when issued and if it has been reported destroyed or stolen in the period of its intended use (for ATP's issued after the 25th of the month, the period of intended use is 20 days from the issuance date or the last day of the month following the issuance month whichever the State agency has chosen in accordance with § 274.2(e)(3)(i));

(D) Examine the casefile for notation of previous requests by the household for replacement of coupons reported destroyed or an ATP reported stolen or destroyed subsequent to receipt. Replacement of an ATP reported as stolen subsequent to receipt shall be made only once in a 6-month period. Replacement of an ATP or coupons reported as destroyed subsequent to receipt shall also be made only once in a 6-month period. If, in the previous 5 months, the household has been issued a replacement for an ATP reported as stolen subsequent to receipt, then a request for a replacement of a stolen ATP shall be denied. If, in the previous 5 months, the household has been issued a replacement of an ATP or coupons reported as destroyed then the request for a replacement of a destroyed ATP shall be denied.

(E) Issue a replacement ATP, if warranted, within 10 days of receipt of request; and,

(F) Indicate in the casefile that a replacement has been provided.

(iii) In cases in which an ATP replacement is requested, but documentation exists substantiating that the request for replacement is fraudulent, replacement of the ATP shall be denied or delayed. However, in that event the household shall be informed of its right to a fair hearing to contest the denial or delay of the replacement of the ATP. The denial or delay of the replacement ATP shall remain in effect pending the hearing decision. The State agency may combine the fair hearing with a fraud hearing in accordance with § 273.16(d)(1). To deny or delay a replacement, the State agency must have documentation substantiating fraud, such as a match between the signature on the original ATP that had been transacted and the signature on the replacement request. Fraud could also be indicated where the issuing agent has noted the recipient's correct food stamp identification number (unless the household reports that its ID was stolen) on an original ATP that has been transacted.

(3) The State agency shall not issue a replacement ATP or allotment to a household which reports that its ATP or coupons were lost or misplaced after being received.

(4) Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits, the household shall not receive both the disaster allotment and a replacement allotment under this provision.

(5) *Improperly manufactured or mutilated coupons.* State agencies shall provide a replacement for coupons that were received by a household but were subsequently mutilated or subsequently found to be improperly manufactured. The amount to be replaced shall be equal to the value of the improperly manufactured or mutilated coupons. If the State agency cannot determine the value of a mutilated coupon after exhausting all available means of determining the value within the State, the State agency shall send the mutilated coupon to FNS for a determination. State agencies shall not replace coupons which are mutilated to such a degree that less than three-

fifths of the coupon is presented by the household.

(6) *Replacement of food destroyed in a disaster.* In cases in which food purchased with food stamps is destroyed in a disaster affecting a participating household, that household may be eligible for replacement of the actual value of loss, not to exceed one month's food stamp allotment, if the loss is reported within 10 days and the household's disaster is verified. The State agency shall verify the disaster through a collateral contact, a community organization such as the Fire Department or the Red Cross, or a home visit. The State agency shall provide a replacement allotment, or an opportunity to obtain a replacement allotment, within 10 days of the reported loss. This provision shall apply in cases of an individual household disaster, such as a fire, as well as in natural disasters affecting more than one household. However, in cases where FNS has issued a disaster declaration and the household is otherwise eligible for emergency food stamp benefits under Part 280 of this chapter, the household shall not receive both the disaster allotment and a replacement allotment under this provision.

(j) *Households with a decrease in income due to intentional failure to comply.* The State agency shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure a comply with a Federal, State, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefit under a Federal, State, or local means-tested program (such as but not limited to SSI, AFDC, GA) is decreased due to intentional noncompliance, the State agency shall identify that portion of the decrease which is a penalty. The penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional violation.

(2) The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

(91 Stat. 968 (7 U.S.C. 2011-2029); sec. 1, Pub. L. 97-98; 95 Stat. 1282 (7 U.S.C. 2012))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified households are required to report the following changes in circumstances:

(i) Changes in the sources of income or in the amount of gross monthly income of more than $25, except changes in the public assistance grant, or the general assistance grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2). Since the State agency has prior knowledge of all changes in the public assistance grant and these general assistance grants, action shall be taken on the State agency information;

(ii) All changes in household composition, such as the addition or loss of a household member;

(iii) Changes in residence and the resulting change in shelter costs;

(iv) The acquisition of a licensed vehicle not fully excludable under § 273.8(e); and

(v) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of $1,500.

(vi) Any change of more than $25 for deductible medical expenses.

(2) Certified households shall report changes within 10 days of the date the change becomes known to the household. Optional procedures for reporting changes are contained in § 273.12(f) for households in States with FNS-approved forms for jointly reporting food stamp and public assistance changes and food stamp and general assistance changes.

(3) An applying household shall report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in paragraph (a)(1) of this

section, which occur after the interview but before the date of the notice of eligibility, shall be reported by the household within 10 days of the date of the notice.

(4) State agencies shall not impose any food stamp reporting requirements on households except as provided in paragraph (a) of this section.

(b) *Report form.* (1) The State agency shall provide households with a form for reporting the changes required in paragraph (a) of this section and shall pay the postage for the household to mail in the report. The reporting form shall, at a minimum, include the following:

(i) A space for the household to report whether the change shall continue beyond the report month;

(ii) The civil and criminal penalties for violations of the Act in understandable terms and in prominent and boldface lettering; and

(iii) A reminder to the household of its right to claim actual utility costs if its costs exceed the standard.

(2) The reporting form may also include the amount of gross income, itemized by household member, used to certify the household, and the source and frequency of the income.

(3) Changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

(4) A change report form shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. A change report may be provided to households more often at the State agency's option.

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. Even if there is no change in the allotment, the State agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report. If the reported change affects the household's eligibility or level of benefits, the adjustment shall also be reported to the household. The State agency shall also advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment. The State agency shall document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a personal visit. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* (i) For changes which result in an increase in a household's benefits, other than changes described in paragraph (c)(1)(ii) of this section, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a $30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

(ii) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50 or more in the household's gross monthly income, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the State agency to adjust the following month's allotment, the State agency shall issue a supplementary ATP or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later. For example, a household reporting a $100 decrease in income at any time during May would have its June allotment increased. If the household reported the change after the 20th of May and it was too late for the State agency to adjust the ATP normally issued on June 1, the State agency would issue a supplementary ATP for the amount of the increase by June 10.

(iii) The State agency may elect to verify changes which result in an increase in a household's benefits in accordance with the verification requirements of § 273.2(f)(9)(ii), prior to taking action on these changes. If the State agency elects this option, it must allow the household 10 days from the date the change is reported to provide verification required by § 273.2(f)(9)(ii). If the household provides verification within this period, the State shall take action on the changes within the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section. The timeframes shall run from the date the change was reported, not from the date of verification. If, however, the household fails to provide the required verification within 10 days after the change is reported but does provide the verification at a later date, then the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section for taking action on changes shall run from the date verification is provided rather than from the date the change is reported. If the State agency does not elect this option, verification required by § 273.2(f)(9)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If in these circumstances the household does not provide verification, the household's benefits will revert to the original benefit level. Whenever a State agency increases a household's benefits to reflect a reported change and subsequent verification shows that the household was actually eligible for fewer benefits, the State agency shall establish a claim for the overissuance in accordance with § 273.18. In cases where the State agency has determined that a household has refused to cooperate as defined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

(2) *Decreases in benefits.* If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported. The decrease in the benefit level shall be made effective not later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. Verification which is required by § 273.2(f) must be obtained prior to recertification.

(d) *Failure to report.* If the State agency discovers that the household failed to report a change as required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household circumstances which it is not required to report in accordance with § 273.12(a)(1). Individuals shall not be disqualified for failing to report a change, unless the individual is disqualified in accordance with the fraud disqualification procedures specified in § 273.16.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include adjustments to the income eligibility standards, the shelter and dependent care deductions, the Thrifty Food Plan, and the standard deduction; annual and seasonal adjustments to Social Security, SSI, and other Federal benefits; periodic adjustments to AFDC or GA payments; and other changes in the eligibility criteria based on legislative or regulatory actions.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) These adjustments shall go into effect for all households at a specific point in time. State agencies may wish to consider timing the annual adjustments of their utility standards to coincide with the Federal shelter deduction adjustment, when such timing is permitted by § 273.9(d)(8).

(A) Adjustments in the Thrifty Food Plan shall be effective in accordance with § 273.10(e)(4)(ii).

(B) Adjustments in the standard deduction shall be effective in accordance with § 273.9(d)(7).

(C) Adjustments in the shelter/dependent care deduction shall be effective in accordance with § 273.9(d)(8).

(D) Adjustments in the income eligibility standards shall be effective in accordance with § 273.9(a)(3).

(2) *Mass changes in public assistance.* (i) When the State agency makes an overall adjustment to public assistance payments, corresponding adjustments in households' food stamp benefits shall be handled as a mass change. When the State agency has at least 30 days' advance knowledge of the amount of the public assistance adjustment, the State agency shall recompute food stamp benefits to be effective in the same month as the public assistance change. If the State agency does not have sufficient notice, the food stamp change shall be effective not later than the month following the month in which the public assistance change was made.

(ii) A notice of adverse action is not required when a household's food stamp benefits are reduced or terminated as a result of a mass change in the public assistance grant. However, State agencies shall send individual notices to households to inform them of the change. If a household requests a fair hearing, benefits shall be continued at the former level only if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

(iii) State agencies which also administer a general assistance program shall handle mass adjustments to GA payments in the same manner as public assistance adjustments. However, where State agencies do not administer both programs, mass changes in GA payments will be handled according to procedures in paragraph (3) of this section.

(3) *Mass changes in Federal benefits.* (i) State agencies shall treat cost-of-living increases received in July 1981 and all other subsequent years and any other mass changes in social security and SSI payments as a mass change for food stamp purposes. The household shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting a household's food stamp benefit level to reflect the change in accordance with the procedures in paragraph (e)(2) of this section, or as noted in paragraph (e)(3)(ii) of this section.

(ii) State agencies which have the capability shall treat the increases as a mass change in accordance with the procedure in paragraph (e)(2) of this section. A State agency is capable of treating these changes as a mass change if the State agency's computer system can identify by social security number individual household members receiving social security or SSI payments and the amount of these payments, and the computer system can extract on a timely basis the new benefit data from BENDEX and/or SDX for each recipient. All other State agencies shall have the option to use any one, or a combination of the following methods: Schedule all households containing one or more members who receive social security or SSI benefits for recertification during July, August, September, and October of each year so that the cost-of-living increases can be reflected in a timely manner; conduct desk reviews to effect the change within the 120 day period. If a State agency with the capability to perform an automated conversion has difficulty doing so it may use one or a combination of the other two methods described.

(iii) For cost-of-living increases scheduled for July 1980, State agencies which have the capability shall treat the increases as a mass change in accordance with the procedures in paragraph (e)(2) of this section. All other State agencies shall, within 180 days of the effective date of the increase, identify cases receiving social security and SSI payments by either desk reviews or at recertification and reflect the cost-of-living increase in the household's allotment. If a State agency with the capability to perform an automated conversion has difficulty doing so, then it may identify cases receiving social security and SSI payments using the methods discussed above and adjust the household's allotment.

(4) *Mass changes resulting from implementation of the Food Stamp Act of 1977.* State agencies shall send an individual notice of adverse action to each household that receives a reduction or termination in benefits during its certification period due to these regulations. The notice of adverse action shall explain to the household that the change is the result of changes in Federal law and that although the household has the right to request a fair hearing, benefits will be continued pending the fair hearing only if the household believes its eligibility or benefit level was computed incorrectly under the new law, or that the new law is being misapplied or misinterpreted. The State agency may substitute a general notice to all or part of the food stamp caseload if the State agency is unable to prepare individual notices of reduction or termination because a procedure is used in which new eligibility rules are matched by machine with current casefile information. The general notice shall explain that the cause of the allotment change, if any, is the Food Stamp Act of 1977, and the circumstances for continuing or reinstating the household's former level of benefits as in an individual notice. State agencies that use a general notice shall send it no later than the allotment or ATP that adjusts the household's benefits to the new program. If a State agency does provide the general notice at the same time as the new allotment or ATP, the State agency must be able to reinstate the former allotment in the same month that a request for continuation is made, provided that the request is made within 90 days of the household's conversion.

(f) *PA and GA households.* (1) Except as provided in paragraph (f)(2) of this section, PA households have the same reporting requirements as any other food stamp household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food stamp purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food stamp cases are processed jointly in accordance with provisions of § 273.2(j)(2).

(2)(i) State agencies may use a joint change reporting form for households to report changes for both PA and food stamp purposes. Whenever a joint change reporting form is used, the State agency shall insure that adjustments are made in a household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

(ii) State agencies may combine the use of a joint PA/food stamp change reporting form with a PA reporting system that demands the regular submission of reports, such as a monthly reporting system. The State agency shall insure that the procedures in § 273.21(h) are followed.

(3) Households shall be notified whenever their benefits are altered as a result of changes in the PA benefits or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period shall not end any earlier than the month following the month in which the State agency determines that the certification period should be shortened, allowing adequate time for the State agency to send a notice of expiration and for the household to timely reapply. If the PA benefits are terminated but the household is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration requirements, if applicable, as their WIN registration exemption no longer applies.

(4) Whenever a change results in the reduction or termination of a house-

hold's PA benefits within its food stamp certification period, and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency shall take the following actions:

(i) If a change in household circumstances requires both a reduction or termination in the PA payment and a reduction or termination in food stamp benefits, the State agency shall issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the hearing shall be conducted according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in paragraph (c) of this section.

(ii) If the household's food stamp benefits will be increased as a result of the reduction or termination of PA benefits, the State agency shall issue the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits shall continue at the previous basis. If the household does not appeal, the State agency shall make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(5) Whenever a change results in the termination of a household's PA benefits within its food stamp certification period, and the State agency does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for public assistance, and the State agency does not have any information on the income of the new household member), the State agency shall not terminate the household's food stamp benefits but shall instead take the following action:

(i) Where a PA notice of adverse action has been sent, the State agency shall wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its PA benefits are continued pending the appeal, the household's food stamp benefits shall be continued at the same basis.

(ii) If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its PA benefits, the State agency shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring because of changes in its circumstances which may affect its food stamp eligibility and benefit level.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

Editorial Note: For Federal Register citations affecting § 273.12, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.13 Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

(3) The State agency may notify a household that its benefits will be reduced or terminated, no later than the date the household receives, or would have received, its allotment, if the following conditions are met:

(i) The household reports the information which results in the reduction or termination.

(ii) The reported information is in writing.

(iii) Based solely upon the household's written information, the State agency can determine the household's allotment or ineligibility.

(iv) The household retains its right to a fair hearing.

(v) The household retains its right to continued benefits by requesting a fair hearing within the time period provided by the notice of adverse action.

(vi) The State agency continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

(b) *Exemptions from notice.* Individual notices of adverse action are not required when:

(1) The State initiates a mass change as described in § 273.12(e).

(2) The State agency determines, based on reliable information, that all members of a household have died.

(3) The State agency determines, based on reliable information, that the household has moved from the project area.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in § 273.16.

(8) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State

agency may act on the verified information without further notice as provided in § 273.2(i)(4).

(9) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

(10) Converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18.

(11) The State agency is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from the appropriate agency or agencies of the State (as defined in § 271.2) or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. However, residents of group living arrangements applying on their own behalf are still eligible to participate.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by 45 FR 7240, Feb. 1, 1980; 45 FR 23293, Apr. 4, 1980; Amdt. 202, 46 FR 44726, Sept. 4, 1981; Amdt. 235, 47 FR 55910, Dec. 14, 1982; Amdt. 222, 48 FR 6316, Feb. 11, 1983; Amdt. 242, 48 FR 6855, Feb. 15, 1983]

§ 273.14 Recertification.

(a) *Action on applications for recertification.* The State agency shall complete the application process and approve or deny timely applications for recertification prior to the end of the household's current certification period and shall provide eligible households with an opportunity to participate by the household's normal issuance cycle in the month following receipt of a timely application. The State agency shall not continue benefits to the household beyond the end of the certification period unless the household has been recertified. The joint processing requirements in § 273.2(j) for PA and GA households shall continue to apply to applications for recertification.

(b) *Notice of expiration.* (1) The State agency shall provide each household with a notice of the expiration of its certification just prior to or at the start of the last month of the household's certification period with the exception of PA and GA households whose applications were jointly processed for food stamps and PA or GA benefits in accordance with § 273.2(j). These PA and GA households need not receive notices of expiration if they are recertified for food stamps at the same time as their PA or GA redetermination, provided the redetermination occurs prior to the last month of their food stamp certification period as assigned in § 273.10(f)(2).

(2) Households that must receive a notice of expiration shall receive it not earlier than 15 days prior to, nor later than the first day of, the household's last month of certification. If it is impossible for the State agency to provide the notice of expiration by the first day of the last month of the household's certification period because the household is certified for 1 month or because the household was initially certified for 2 months during the month following the month of application, the notice of expiration shall be provided at the time of certification.

(3) The notice of expiration shall inform the household of the date the current certification period ends; the date by which the household must file an application to receive uninterrupted benefits; the household's right to request an application and have the State agency accept an application as long as it is signed and contains a legible name and address; the address of the office where the application must be filed; the consequences of failure to comply with the notice of expiration; the household's right to file the application by mail or through an authorized representative; and the household's right to a fair hearing if the State agency refuses to accept as good cause the household's reasons for failure to comply with the notice of expiration. The notice shall also inform recipients that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration (SSA). The State agency is encouraged to include an application form with the notice of expiration and/or an appointment for an interview. Regardless of when the

interview date is assigned, the household has timely applied if the application is received by the 15th day of the last month of certification. In cases where households consisting of applicants or recipients of Supplemental Security Income (SSI) apply for food stamp recertification at offices of the Social Security Administration (SSA) in accordance with § 273.2(k)(1)(ii), an application shall be considered filed for normal processing purposes when the signed application is received by SSA.

(4) Households provided a notice of expiration at the time of certification, in accordance with paragraph (b)(2) of this section, shall have 15 days from the date the notice is received to file a timely application for recertification. All other households which submit identifiable applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification. To aid the State agency in determining if adequate time has been permitted, the State agency shall use the postmark on the notice of expiration, plus 2 days for mailing time. In cases of dispute, the household may demonstrate that the notice of expiration was not, in fact, received in a timely manner.

(c) *State action on timely reapplications.* The State agency shall act on timely reapplications to provide uninterrupted benefits to households determined eligible. The State agency shall not require households receiving notices of expiration to appear for an interview before the last month of their current certification periods. However, the State agency may schedule an interview prior to the last month of the certification period or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview. The State agency shall schedule an interview on or after the date the application was timely filed if an interview has not been previously scheduled or the household has failed or refused to appear for any interviews scheduled prior to the date the application was timely filed. A household which fails without good cause to appear for an interview scheduled after the application is timely filed shall lose its right to uninterrupted benefits, but shall not be denied at that point unless it has refused to cooperate. State agencies shall take action on timely reapplications within the following time standards, even if, to meet these standards, the State agency must provide an opportunity to participate outside of the normal issuance system.

(1) Households that were provided a notice of expiration at the time of certification and have timely reapplied shall be notified of their eligibility or ineligibility and provided an opportunity to participate, if eligible, not later than 30 days after the date the household had an opportunity to obtain its last allotment.

(2) For those households that have filed an application by the 15th of the last month of their certification period, the State agency shall approve or deny the application and notify the household of its determination by the end of the current certification period. In addition, for households determined eligible, the State agency shall provide an opportunity to participate by the household's normal issuance cycle in the month following receipt of the timely reapplication even if the State agency must provide an opportunity to participate outside of the normal issuance system. Households which have timely reapplied, but due to State agency error are not determined eligible in sufficient time to provide for issuance in the household's normal issuance cycle for the following month, shall receive an immediate opportunity to participate upon being determined eligible, even if the State agency must provide an opportunity to participate outside of the normal issuance system.

(d) *State agency failure to act.* State agency failure to provide eligible households which filed a timely application for recertification with an opportunity to participate in accordance with the above provisions shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

(e) *Failure to submit a timely reapplication.* A household which fails without good cause to submit a timely application for recertification, or to appear for an interview scheduled after the household timely filed its application for recertification, shall lose its right to uninterrupted benefits. Households which refuse to cooperate in providing required information shall be denied. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses need not be verified if the source has not changed and the amount has changed by $25 or less.

(f) *Good cause for failure to timely reapply.* If the State agency determines that the household's failure to make timely application, or to otherwise complete the certification process in a timely manner, was for good cause, the household shall be entitled to restoration of lost benefits, if as a result of its failure, the household was unable to participate in the month following the expiration of its certification period. The determination of good cause shall be made on a case by case basis, and shall include, but not be limited to, failure to receive timely notice of expiration or personal illness.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 197, 47 FR 27546, June 25, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984]

§ 273.15 Fair hearings.

(a) *Availability of hearings.* Except as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the houshold in the Program.

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits the household to further appeal a local decision to a State level fair hearing. State agencies may adopt local level hearings in some project areas and maintain only State level hearings in other project areas.

(c) *Timely action on hearings*—(1) *State level hearings.* Within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. Decisions which result in an increase in household benefits shall be reflected in the coupon allotment within 10 days of the receipt of the hearing decision even if the State agency must provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. However, the State agency may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

(2) *Local level hearings.* Within 45 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(3) *Appeals of local level decisions.* Within 45 days of receipt of any request for a State level review of a decision or for a new State level hearing, the State agency shall assure that the review or the new hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(4) *Household requests for postponement.* The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

(d) *Agency conferences.* (1) The State agency shall offer agency conferences to households which wish to contest a denial of expedited service under the procedures in § 273.2(i). The State agency may also offer agency conferences to households adversely affected by an agency action. The State agency shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

(2) An agency conference for households contesting a denial of expedited service shall be scheduled within 2 working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(e) *Consolidated hearings.* State agencies may respond to a series of individual requests for hearings by conduction a single group hearing. State agencies may consolidate only cases where individual issues of fact are not disputed and where related issues of State and/or Federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have its case presented by a representative.

(f) *Notification of right to request hearing.* At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the State agency that it disagrees with a State agency action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service.

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

(h) *Request for hearing.* A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(i) *State agency responsibilities on hearing requests.* (1) Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the request speaks a language other than English and the State agency is required by § 272.4(c)(3) to provide bilingual staff or interpreters who speak the appropriate language, the State agency shall insure that the hearing procedures are verbally explained in that language. Upon request, the State agency shall also help a household with its hearing request. If a household makes an oral request for a hearing, the State agency shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of

the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits if the decision so indicates before they leave the area.

(3) The State agency shall publish clearly written uniform rules of procedure that conform to these regulations and shall make the rules available to any interested party. At a minimum, the uniform rules of procedure shall include the time limits for hearing requests as specified in paragraph (g) of this section, advance notification requirements as specified in paragraph (i)(1) of this section, hearing timeliness standards as specified in paragraph (c) of this section, and the rights and responsibilities of persons requesting a hearing as specified in paragraph (p) of this section.

(j) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in paragraph (g) of this section;

(2) The request is withdrawn in writing by the household or its representative; or

(3) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(k) *Continuation of benefits.* (1) If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in § 273.13, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. The form for requesting a fair hearing shall contain space for the household to indicate whether or not continued benefits are requested. If the form does not positively indicate that the household has waived continuation of benefits, the State agency shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances. If a hearing request is not made within the period provided by the notice of adverse action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the State agency shall reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted by the State agency.

(2) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

(3) The State agency shall promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(l) *Notification of time and place of hearing.* The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or its representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

(m) *Hearing official.* Hearings shall be conducted by an impartial official(s) who: Does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the eligibility worker who took the action. State level hearings shall be conducted by State level personnel and shall not be conducted by local level personnel.

(1) *Designation of hearing official.* The hearing official shall be:

(i) An employee of the State agency;

(ii) An individual under contract with the State agency;

(iii) An employee of another public agency designated by the State agency to conduct hearings;

(iv) A member or official of a statutory board or other legal entity designated by the State agency to conduct hearings; or

(v) An executive officer of the State agency, a panel of officials of the State agency or a person or persons expressly appointed to conduct State level hearings or to review State and/or local level hearing decisions.

(2) *Power and duties.* The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Insure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;

(vi) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the State agency, in accordance with paragraph (q) of this section, which will resolve the dispute.

(n) *Hearing authority.* The hearing authority shall be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority shall be subject to the requirements specified in paragraph (m) of this section.

(o) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space limitations exist.

(p) *Household rights during hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's in-

eligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(q) *Hearing decisions.* (1) Decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with § 272.1(f). This record shall also be available to the household or its representative at any reasonable time for copying and inspection.

(2) A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

(3) The household and the local agency shall each be notified in writing of: The decision; the reasons for the decision in accordance with paragraph (q)(2) of this section; the available appeal rights; and that the household's benefits will be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision. The following are additional notice requirements and the available appeal rights:

(i) After a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the decision. In addition, in States which provide for rehearings of State level decisions, the household shall be notified of the right to pursue a rehearing.

(ii) After a local level hearing decision which upholds the State agency action, the household shall be notified of the right to request a completely new State agency level hearing, and that a reversal of the decision may result in the restoration of lost benefits to the household. In addition, the household shall be advised that if a new hearing would pose an inconvenience to the household, a State level review of the decision based on the hearing record may be requested instead of a new hearing. A clear description of the two appeal procedures must be included to enable the household to make an informed choice, if it wishes to appeal. If the household indicates that it wishes to appeal, but does not select the method, the State agency shall proceed with a new State level hearing.

(4) If the household wishes to appeal a local level hearing decision, the appeal request must be filed within 15 days of the mailing date of the hearing decision notice. Within 45 days of receipt of any request for a State level review of the decision or for a new State level hearing, the State agency shall assure that the review or the hearing is conducted, and that a decision is reached and reflected in the coupon allotment. If a new hearing will not be held, the State level hearing official will review the local level hearing record to determine if the

local decision was supported by substantial evidence. State level review procedures shall provide for notifying the local agency and the household that each may file a summary of arguments which shall become a part of the record if timely received. Both parties shall be advised that failure to file a summary will not be considered in deciding the case and that the summary must be postmarked within 10 days of receipt of the notice.

(5) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 272.1(c), and provided identifying names and addresses of household members and other members of the public are kept confidential.

(r) *Implementation of local level hearing decision.* (1) In the event the local hearing decision upholds the State agency action, any benefits to the household which were continued pending the hearing shall be discontinued beginning with the next scheduled issuance, regardless of whether or not an appeal is filed. Collection action for any claims against the household for overissuances shall be postponed until the 15-day appeal request period has elapsed, or if an appeal is requested, until the State agency upholds the decision of the local hearing authority.

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45 day time limit allowed for local hearing procedures. Any lost benefits due to the household shall be issued as soon as administratively feasible. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(s) *Implementation of final State agency decisions.* The State agency is responsible for insuring that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in paragraph (c) of this section.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(2) When the hearing authority upholds the State agency's action, a claim against the household for any overissuances shall be prepared in accordance with § 273.18.

(t) *Review of appeals of local level decisions.* State agencies which adopt a local level hearing system shall establish a procedure for monitoring local level hearing decisions. The number of local level decisions overturned upon appeal to a State level hearing shall be examined. If the number of reversed decisions is excessive, the State agency shall take corrective action.

(u) *Departmental review of decisions contrary to Federal law and regulations.* [Reserved]

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33385, June 8, 1979; Amdt. 146, 46 FR 1427, Jan. 6, 1981]

§ 273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in § 273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the administrative disqualification or court decision shall be deferred until the individual applies for and is determined eligible for Program benefits.

(2) Each State agency shall establish a system for conducting administrative disqualifications for intentional Program violation which conforms with the procedures outlined in paragraph (e) of this section. FNS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (g)(1) of this section, with the State's Attorney General's Office or, where necessary, with county prosecutors. FNS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FNS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FNS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected intentional Program violation claims through the courts.

(3) The State agency shall base administrative disqualifications for intentional Program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (g) of this section. However, any State agency has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section or to sign disqualification consent agreements for cases of deferred adjudication in accordance with paragraph (h) of this section. Any State agency which chooses either of these options may base administrative disqualifications for intentional Program violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

(b) *Disqualification penalties.* Individuals found to have committed intentional Program violation either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation, and permanently for the third violation. However, one or more intentional Program violation disqualifications which occurred prior to the implementation of these penalties shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration. If a court fails to impose a disqualification period for the intentional Program violation, the State agency shall impose the disqualification penalties specified in this section unless it is contrary to the court order. State agencies shall disqualify only the individual found to have committed intentional Program violation, or who signed the waiver of right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household. The remaining household members shall agree to make restitution within 30 days of the date the State agency's written demand letter is mailed or the household's monthly allotment shall be reduced. If the remaining household members agree to make restitution but fail to do so, the State agency shall impose an allotment reduction on the household's monthly allotment. The remaining household members, if any, shall begin restitution during the period of disqualification imposed by the State agency or a court of law. All restitutions shall be made in accordance with established procedures for cash repayment, allotment reduction, or coupons for repayment.

(c) *Definition of intentional Program violation.* For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional Program violation, intentional Program violations shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

(d) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional Program violation each time it applies for Program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(e) *Disqualification hearings.* The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.

(1) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. And, if the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

(2) *Disqualification hearing procedures.* (i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only disqualification hearings.

(ii) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(iii) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the household member suspected of intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. The notice shall be mailed certified mail-return receipt requested or provided by any other method as long as proof of receipt is obtained, and shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the household member;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(E) A statement that the household member or representative will have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the household member's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for intentional Program violation in a civil or criminal court action, or from collecting the overissuances; and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the household member of the availability of the service.

(ii) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the household of its right to obtain a copy of the State agency's published hearing procedures upon request.

(iii) Each State agency shall develop an advance notice form which contains the information required by this section. A model form for providing advance notice of a scheduled hearing is available from FNS for adaptation by any State agency.

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intention-

al Program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Program. Since the State agency cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed intentional Program violation, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of Program violation.

(6) *Criteria for determining intentional Program violation.* The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraphs (c) of this section.

(7) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the household member has committed intentional Program violation, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) on this section beginning with the first month which follows the date the household member receives written notification of the hearing decision. However, if the act of intentional Program violation which led to the disqualification occurred prior to notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determinaton of international Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualifed member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(9) *Notification of hearing decision.* (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the hearing official finds that the household member committeed intentional Program violation, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Program benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(iii) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have committed intentional Program violation. The form shall contain the information required by this section. A model form for notifying individuals of an adverse hearing decision is available from FNS for adaptation by any State agency.

(10) *Local level hearings.* (i) The State agency may choose to provide administrative disqualification hearings at the local level in some or all of its project areas with a right to appeal to a State level hearing. If a local level disqualification hearing determines that a household member committed intentional Program violation the notification of hearing decision, as described in paragraph (e)(9) of this section, shall also inform the household member of the right to appeal the decision within 15 days after the receipt of the notice, the date disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the household member appeals the local level decision, the advance notice of hearing, as described in paragraph (e)(3) of this section, shall be provided at least 10 days in advance of the scheduled State level hearing and shall also inform the household member that the local hearing decision will be upheld if the household or its representative fails to appear for the hearing without good cause. When a local level decision is appealed, the State agency shall conduct the State level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case. The prior decision shall not be taken into consideration by the State hearing officer in making the final determination. In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this section for State level hearings.

(ii) The State agency shall develop appropriate forms which contain the information required by this section for notification of a local level hearing decision and advance notice of a scheduled State level hearing for appeal of a local level decision.

(f) *Waived hearings.* Each State agency shall have the option of establishing procedures to allow accused individuals to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall provide written notification to the household member suspected of intentional Program violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.

(ii) The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;

(D) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*1*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*2*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(iii) The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information described in paragraph (e)(3) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by paragraph (e)(3)(i)(A) of this section.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act of intentional Program violation which led to the disqualification occurred prior

to the written notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* The State agency shall provide written notice to the household member prior to disqualification. The State agency shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice(s) shall conform to the requirements for notification of a hearing decision specified in paragraph (e)(9) of this section. A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(4) *Waiver of hearing at local level.* Any State agency which has adopted the two-tiered approach for administrative disqualification hearings may also provide for waiver of the right to disqualification hearing procedures outlined in this section.

(g) *Court referrals.* Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with paragraph (a) of this section shall refer appropriate cases for prosecution by a court of appropriate jurisdiction in accordance with the requirements outlined in this section.

(1) *Appropriate cases.* (i) The State agency shall refer cases of alleged intentional Program violation for prosecution in accordance with an agreement with prosecutors or State law. The agreement shall provide for prosecution of intentional Program violation cases and include the understanding that prosection will be pursued in cases where appropriate. This agreement shall also include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from intentional Program violation.

(ii) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large amounts of food stamps are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal penalties for such violations.

(2) *Imposition of disqualification penalties.* (i) State agencies shall dis-

qualify an individual found guilty of intentional Program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(ii) If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the court finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(h) *Deferred adjudication.* Each State agency shall have the option of establishing procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. State agencies are encouraged to use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor. For State agencies which choose the option of allowing individuals to sign disqualification consent agreements in cases referred for prosecution, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall enter into an agreement with the State's Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(ii) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication shall include, at a minimum:

(A) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block.

(B) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil of criminal misrepresentation or fraud.

(C) A warning that the disqualification penalties for intentional Program violation under the Food Stamp Program which could be imposed are a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(D) A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(iii) The State agency shall develop a disqualification consent agreement, or language to be included in the agreements reached between the prosecutors and accused individuals or in the court orders, which contains the information required by this section for notifying a household member suspected of intentional Program violation of the consequences of signing a disqualification consent agreement.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section, unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the State agency shall disqualify the household member in accordance with the court order.

(ii) If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the household member suspected of intentional Program violation signs the disqualification consent agreement, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(i) *Reporting requirements.* (1) Each State agency shall report to FNS information concerning individuals disqualified for intentional Program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be submitted to FNS so that it is received no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualification is pending future eligibility.

(2) Each State agency shall report information concerning each individual disqualified for intentional Pro-

gram violation in a format designed by FNS. This format shall include the individual's social security number, date of birth, and full name, the number of the disqualification (1st, 2nd, or 3rd), the State and county in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified for intentional Program violation through a reporting system in accordance with procedures specified by FNS.

(4) All the data submitted by State agencies will be available for use by any State Welfare Agency.

(i) State agencies shall, at a minimum, use the data for the following:

(A) To determine the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another political jurisdiction, and

(B) To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration.

(ii) State agencies may also use the data in other ways, such as the following:

(A) To screen all program applicants prior to certification, and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(5) The disqualification of an individual for intentional Program violation in one political jurisdiction shall be valid in another. However, one or more fraud disqualifications which occurred prior to the implementation of the penalties contained in these regulations shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(6) In cases where the imposition of a disqualification penalty is being held pending the future eligibility of a household member found to have committed intentional Program violation, the State agency shall submit a report revising the original disqualification report once the individual begins the period of disqualification in accordance with instructions provided by FNS.

(7) In cases where the disqualification for intentional Program violation is reversed by a court of appropriate jurisdiction, the State agency shall submit a report to purge the file of the information relating to the disqualification which was reversed in accordance with instructions provided by FNS.

(j) *Reversed disqualifications.* In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17(e).

(91 Stat. 958 (7 U.S.C. 2011-2029); secs. 112, 113 and 114 of Pub. L. 97-35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97-253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

[Amdt. 242, 48 FR 6855, Feb. 15, 1983]

§ 273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(i) The date the State agency receives a request for restoration from a household; or

(ii) The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

(2) The State agency shall restore to households benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a State agency action, the benefits shall be restored for a period of not more than twelve months from the first of the following dates:

(i) The date the State agency receives a request for restoration:

(ii) If no request for restoration is received, the date the fair hearing action was initiated; but

(iii) Never more than one year from when the State agency is notified of, or discovers, the loss.

(3) Benefits shall be restored even if the household is currently ineligible.

(b) *Errors discovered by the State agency.* If the State agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the State agency shall automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits shall not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(c) *Disputed benefits.* (1) If the State agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the State agency or any other action taken by the State agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the case file, does not agree, the household has 90 days from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored.* After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12-month time limits described in paragraphs (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows:

(1) If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period.

(ii) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures in § 273.2(h).

(iii) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.

(iv) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, the State agency shall advise the household of what information must be provided to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively.

(e) *Lost benefits to individuals disqualified for intentional Program violation.* Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of State agency notification, only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action. For each month the individual was disqualified, not to exceed twelve months prior to State agency notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

(f) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition.* Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

(i) *Losses of benefits that occurred prior to elimination of the purchase requirement.* Households assigned a purchase requirement that was too high or assigned an incorrect household size shall be entitled to restoration of lost benefits if the household received fewer bonus stamps as a result. The amount to be restored is equal to the difference between the bonus stamps the household received and the correct amount the household should have received. State agencies shall restore the lost benefits in accordance with the procedures outlined in this section.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 225, 48 FR 16831, Apr. 19, 1983]

§ 273.18 Claims against households.

(a) *Establishing claims against households.* The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by a misunderstanding or unintended error on the part of the household.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action.

(3) *Intentional Program violation claims.* A claim shall be handled as an intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in § 273.16(c), or an individual is disqualified as a result of signing either a waiver of his/her disqualification hearing as discussed in § 273.16(f) or a disqualification consent agreement in cases referred for prosecution as discussed in § 273.16(h). Prior to the determination of intentional Program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household shall be handled as an inadvertent household error claim.

(b) *Criteria for establishing inadvertent household and administrative error claims.* The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elasped between the month an overissuence occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more than 12 months have elasped. However, the State agency shall not take action on claims for which more than six years have elasped between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

(1) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information;

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances; or

(iii) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

(2) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency continued to provide a household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,

(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) *Calculating the amount of claims*—(1) *Inadvertent household and administrative error claims.* (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. The State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(B) If the household timely reported a change, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) *Intentional Program violation claims.* (i) For each month that a household received an overissuance due to an act of intentional Program violation, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional Program violation claim shall be calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. If the household member is determined to have committed intentional Program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(iii) Once the amount of the intentional Program violation claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households*—(1) Criteria for initiating collection action on inadvertent household and administrative error claims.

(i) State agencies shall initiate collection action against the household on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than $35, and the claim cannot be recovered by reducing the household's allotment. However, any State agency shall have the option to initiate collection action for other claims under $35 at such time that multiple overissuances for a household total $35 or more. If the State agency chooses this option, households shall be informed of this policy.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional Program violation claims.* If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction) or has signed either a waiver as discussed in § 273.16(f) or a consent agreement as discussed in § 273.16(h), the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State agency shall initiate collection action for an unpaid or partially paid

claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation of fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the State agency shall request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and accused individual.

(3) *Initiating collection on claims.* (i) State agencies shall initiate collection action by providing the household a written demand letter which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the amount of the claim, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing. If there is an individual or organization available that provides free legal representation, the written demand letter shall also advise the household of the availability of the service. For inadvertent household error and intentional Program violation claims, the household shall also be informed of the length of time the household has to decide which method of repayment it will choose and inform the State agency of its decision and of the fact that the household's allotment will be reduced if the household fails to agree to make restitution. For administrative error claims, the household shall also be informed of the availability of allotment reduction as a method of repayment if the household prefers to use this method. In addition, any household against which the State agency has initiated collection action shall be informed of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section should the household's economic circumstances change. The demand letter shall provide space for the household to indicate the method of repayment and a signature block.

(ii) Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this section. A model form letter for demanding restitution of an overissuance is available from FNS for adaptation by any State agency.

(iii) If the household pays the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined in paragraphs (g) and (h) of this section.

(4) *Action against households which fail to respond.* (i) If the household against which collection action has been initiated for repayment of an inadvertent household error or intentional Program violation claim is currently participating in the program and does not respond to the written demand letter within 30 days of the date the notice is mailed, the State agency shall reduce the household's food stamp allotment.

(ii) If any nonparticipating household or if any currently participating household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action, as specified in paragraph (e) of this section, have been met, or until the State agency initiates other collection actions.

(iii) The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error, administrative error, or intentional Program violation claim. If the State agency chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to FNS in accordance with the procedures outlined in paragraph (h) of this section and the State agency's retention shall be based on the actual amount collected from the household through such collection actions.

(e) *Suspending and terminating collection of claims*—(1) *Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a nonparticipating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional Program violation claims.* The State agency may suspend collection action on intentional Program violation claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under $100, at least two demand letters for claims between $100 and $400, and at least three demand letters for claims of more than $400, further collection action of any intentional Program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with § 273.17.

(f) *Change in household composition*—(1) *Inadvertent household and administrative error claims.* The State agency shall initiate collection action against the household which received the overissuance for which the inadvertent household or administrative error claim was established. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred. If the State agency cannot locate or determine the household which contains a majority of household members, the State agency shall initiate collection action against the household containing the head of the household at the time the overissuance occurred.

(2) *Intentional Program violation claims.* The State agency shall initiate collection action against the household which contained the household member found to have committed intentional Program violation and which received the overissuance for which the claim was established. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the act(s) of intentional Program violation occurred. However, the State agency shall have the option to initiate collection action against the household currently containing the individual found to have committed intentional Program violation if it determines that circumstances warrant such action. The State agency may choose to exercise this option if, for example, it determines that a particular household member was responsible for the act of intentional Program violation and that household member subsequently changes households. If the State agency cannot locate or determine the household which contains a majority of household members and chooses not to exercise the option of initiating collection action against the individual found to have committed intentional Program violation, the State agency shall initiate collection action against the household containing the head of the household at the time the overissuance occurred.

(g) *Method of collecting payments.* As specified in paragraph (d) of this section, State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required

to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional Program violation claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be reached. The State agency shall have the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error or intentional Program violation claim if a settlement cannot be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional Program violation claims has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program violation claim, the State agency shall ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the State agency and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

(3) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional Program violation claims from households currently participating in the program by reducing the household's food stamp allotments. State agencies shall collect payments for administrative error claims from households currently participating in the program by reducing the household's food stamp allotments if the household prefers to use this method of repayment. Prior to reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be recovered each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month), and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of an inadvertent household error or intentional Program violation claim not repaid through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for a $10 minimum benefit level for households with one and two members only, as described in § 273.10(e)(2)(ii)(B), shall apply to the allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the household's monthly allotment *or* $10 per month.

(ii) *Administrative error claims.* For administrative error claims, the amount of food stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim.

(iii) *Intentional Program violation claims.* For intentional Program violation claims, the amount of food stamps shall be the greater of 20 percent of the household's monthly entitlement *or* $10 per month.

(h) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional Program violation, or administrative error claims. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The States' letter of credit will be amended on a quarterly basis to reflect the States' retention of 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

(2) Each State agency shall submit quarterly a Form FNS-209, Status of Claims Against Households, to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FNS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional Program violation claims each quarter on Form FNS-209, the State

agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional Program violation claims collections, the State agency shall include cash or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of benefits not issued during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional Program violation claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional Program violation determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing offical or a court of appropriate jurisdiction that intentional Program violation was committed, or receiving from an individual either a signed waiver or consent agreement, at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, the State agency shall include a note in an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances. Overpaid amounts of a claim which have previously been reported as collected via the FNS-209 and which have been repaid to the household shall be reported in the appropriate column on the FNS-209 for the quarter in which the repayment occurred. The amount of the repayment shall be subtracted from the total amount collected. The appropriate retention rate shall be applied to the reduced collection total.

(5) In cases where FNS has billed a State agency for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note as an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(i) *Returned coupons.* If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in this section.

(1) The State agency shall require claims collection points to either send the coupons which are not returned to inventory to the State agency for destruction or hold the subject coupons in secure storage pending examination and destruction by the State agency at the claims collection point. After verification of the reports from the claims collection point, the State agency shall destroy the coupons or coupon books received from the claims collection points if the value of the coupons does not exceed $500.00 per claims collection point for any month. If the value of the coupons to be destroyed exceeds $500.00 per claims collection point per month, the State agency shall request FNS approval prior to any destruction of the coupons.

(2) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing, or cutting so that they are not negotiable. Two State agency officials shall witness and certify the destruction and forward the Form FNS-471, *Coupon Account and Destruction Report*, with the Form FNS-209.

(j) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (h) of this section.

(k) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods, used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

(l) *Interstate claims collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in § 273.18(h), shall be retained by the State agency which collects the overissuance.

(91 Stat. 958 (7 U.S.C. 2011-2029); secs. 112, 113 and 114 of Pub. L. 97-35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97-253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

[Amdt. 242, 48 FR 6861, Feb. 15, 1983]

§ 273.19 [Reserved]

§ 273.20 SSI cash-out States.

(a) *Ineligibility.* No individual who receives supplemental security income benefits and/or State supplementary payments as a resident of the States of California or Wisconsin is eligible to receive food stamp benefits. The Secretary of Health, Education, and Welfare has determined that the SSI payments in these States have been specifically increased so as to include the value of the food stamp allotment.

(b) *Receipt of SSI benefits.* In California and Wisconsin, an individual must actually receive, not merely have applied for, SSI benefits to be determined ineligible for the food stamp program. If the State agency provides payments at least equal to the level of SSI benefits to individuals who have applied for but are awaiting an SSI eligibility determination, receipt of these substitute payments will terminate the individual's eligibility for food stamp benefits. Once SSI benefits are received, the individual will remain ineligible for food stamp benefits, even during months in which receipt of the SSI benefits is interrupted, or suspended, until the individual is terminated from the SSI program.

(c) *Income and resources.* In California and Wisconsin, the income and resources of the SSI recipient living in a household shall not be considered in determining eligibility or level of beneifts of the household, as specified in § 273.11(d).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33383, June 8, 1979. Redesignated at 45 FR 7217, Jan. 31, 1980; Amdt. 237, 47 FR 57669, Dec. 28, 1982]

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) *System design.* This section provides for an MRRB system for determining household eligibility and benefits. For included households, this system replaces the prospective budgeting system provided in the preceding sections of this Part. The MRRB system provides for the use of retrospective information in calculating household benefits, normally based on information submitted by the household in monthly reports. The State agency shall establish an MRRB system as follows:

(1) In establishing either a one-month and a two-month MRRB system, the State agency shall use the same system it uses in its AFDC Program unless it has been granted a waiver by FNS. Differences between a one-month and a two-month system are described in paragraph (d) of this section.

(2) The State agency shall determine eligibility, either prospectively or retrospectively, on the same basis that it uses for its AFDC program, unless it has been granted a waiver by FNS.

(3) The household shall be certified for a continuous period of up to twelve months, but for no less than six months.

(b) *Included and excluded households.* An MRRB system shall include all households except as follows:

(1) *Retrospective budgeting.* The State agency shall exclude migrant farmworker households from retrospective budgeting as long as the households are in the migrant job stream. In addition, households which the State agency has determined would otherwise experience serious hardship in accordance with paragraph (g)(1) of this section shall be excluded from retrospective budgeting during their beginning months of participation.

(2) *Monthly reporting.* (i) The State agency shall exclude the following households from monthly reporting:

(A) Migrant farmworker households while they are in the migrant job stream; and

(B) Households without earned income whose adult members are all elderly or disabled.

(3) *Special assistance.* The State agency shall provide special assistance in completing and filing monthly reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required reports.

(c) *Information on MRRB.* At the certification interview, the State agency shall provide the household with the following:

(1) An oral explanation of the purpose of MRRB;

(2) A copy of the monthly report and an explanation of how to complete and file it;

(3) An explanation of what the household shall verify when it submits a monthly report and how it will verify it;

(4) The telephone number (toll free for households outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

(5) Written explanations of this information.

(d) *One and two-month systems.* Each State agency shall adopt either a one-month or two-month MRRB system. A one month system shall have one beginning month in the certification period and a two-month system shall have two beginning months, except that for a household which has applied for food stamps and AFDC at the same time the State agency may allow an additional beginning month if necessary to coincide with the AFDC budgeting system. Except for beginning months in sequence as described in the preceding sentence, the State agency shall not consider as a beginning month any month which immediately follows a month in which a household is certified.

(1) *One-month system.* In the one-month system, the issuance month immediately follows its corresponding budget month. There is one beginning month of participation in this system, the first month for which the household is certified, except when an additional beginning month is provided in accordance with introductory para-

graph (d) of this section. The month preceding the first month for which the household is certified shall be the first budget month.

(2) *Two-month system.* In the two-month system, the issuance month is the second month following its corresponding budget month. There are two beginning months of participation in this sytem, the first month and the following month, except when and additional beginning month is provided in accordance with introductory paragraph (d) of this section.

(e) *Determining eligibility for households not certified under the serious hardship provisions of § 273 21(g).* The State agency shall determine eligibility consistent with paragraph (a)(2) of this section and in accordance with either of the following options.

(1) *Prospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility prospectively for each of the issuance months.

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month.

(f) *Calculating allotments for households not suffering serious hardship*—(1) *Household composition.* (i) If eligibility is determined retrospectively the State agency shall determine the household's composition as of the last day of the budget month.

(ii) If eligibility is determined prospectively (such as for serious hardship cases or households processed under paragraph (e)(1) of this section), the State agency shall determine the household's composition as of the issuance month.

(iii) In a two-month system, the following provisions shall apply with regard to a household which reports, in the month between the budget month and the corresponding issuance month, that it has gained a new member.

(A) The State agency shall use the same household composition for determining the household's eligibility that it uses for calculating the household's benefit level.

(B) If the new member is not already certified to receive food stamps in another household participating within the State, the new member's income, deductible expenses, and resources from the issuance month shall be considered in determining the household's eligibility and benefit level.

(C) If the individual has moved out of one household receiving food stamps within the State and into another, with no break in participation, the State agency shall use the individual's income, deductible expenses, and resources from the budget month in determining benefits to be provided in the issuance month. The State agency shall include such an individual and the individual's income, deductible expenses, and resources in determining the issuance month eligibility and benefit level of either the household from which the individual has moved or the household into which the individual has moved, but not both.

(2) *Income and deductions.* For the household members as determined in accordance with paragraph (f)(1) of this section, the State agency shall calculate the allotment using the household members' income and deductions from the budget month, except as follows:

(i) The State agency shall annualize self-employment income which is received other than monthly, in accordance with § 273.11(a).

(ii) The State agency shall prorate income received by contract in less than one year over the period the income is intended to cover, in accordance with § 273.10(c)(3)(ii).

(iii) The State agency shall prorate nonexcluded scholarships, deferred educational loans, and other educational grants over the period they are intended to cover, in accordance with § 273.10(c)(3)(iii).

(iv) For a new household member described under paragraph (f)(1)(iii)(B) of this section, the State agency shall consider the new member's income and deductible expenses prospectively until the new member's first month living with the household becomes the budget month.

(v) The options provided under paragraph (j)(1)(vii) of this section may affect the calculation of income and deductions.

(g) *Determining eligibility and allotments in the beginning months for households suffering serious hardship.* The State agency shall use the special procedures (prospective budgeting) of this paragraph only for households who would experience serious hardship if the State agency used the budgeting procedures described in paragraph (e) and (f) of this section. (For all other households, the State agency shall use the procedures in paragraphs (e) and (f) of this section).

(1) *Households which suffer serious hardship.* A household suffers serious hardship from retrospective budgeting if:

(i) It has gained or expects to gain a new household member in the month of application or in the month prior to the month of application; or

(ii) It is entitled to expedited service, determined prospectively, for the month of application, in accordance with § 273.2(i); or

(iii) It is a migrant farmworker household which has returned to its home base from the migrant job stream in the month of application or the prior month; or

(iv) It would otherwise experience a serious hardship as defined by the State agency; provided that

(v) The household has not deliberately caused a reduction in its own income through participation in a strike, quitting a job, or reducing its wages; and

(vi) The household's income has not been reduced to recover prior overpayments for an intentional violation or inadvertent household error in assistance programs such as, but not limited to, Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC) and General Assistance (GA).

(2) *Determining eligibility for serious hardship cases.* The State agency shall determine eligibility prospectively in the beginning month(s).

(3) *Calculating allotments for serious hardship cases.* the State agency shall calculate allotments prospectively in the beginning month(s).

(4) *The first months of retrospective budgeting for serious hardship cases.* The State agency shall begin to base issuances to the household on retrospective budgeting during the first month for which the State's system can use the month of application as a budget month. In a one-month system, the first month for which the issuance is based on retrospective budgeting shall be the second month of participation. In a two-month system, the first month for which the issuance is based on retrospective budgeting shall be the third month of participation. However, if the State agency has extended the household an additional beginning month as allowed under paragraph (d) of this section, the first month of retrospective budgeting shall be the third month of participation in a one-month system or the fourth month of participation in a two-month system. For the purposes of this paragraph, any income that the household received in a beginning month from a source which no longer provides income to the household (income from a terminated source) which was included in the household's prospective budget shall be disregarded when the beginning month becomes the budget month. Such income from a terminated source shall be disregarded for no more than one month.

(h) *The monthly report form*—(1) *General.* (i) The State agency shall give the household a reasonable period of time after close of the budget month to submit the monthly reports.

(ii) The State agency shall require each household in the MRRB system to report on household circumstances on a monthly basis as a condition of continuing eligibility.

(iii) The State agency shall provide an individual or agency unit which a household may contact to receive prompt answers about the completion of the form. A telephone number (toll free for households outside the local calling area) which a household may use to obtain further information shall also be available.

(iv) The State agency shall ensure that households are informed about the availability and amount of the standard utility allowances, if the State agency offers them.

(2) *Monthly report form.* The State agency's monthly report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(c) of this chapter;

(iii) Specify the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which the household must submit with the form, in accordance with § 273.21(i);

(v) Identify the individual or agency unit available to assist in completing the form:

(vi) Include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits, including reduction and termination;

(vii) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud.

(viii) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security number (SSN's) (including the statutory citation, the title of the statute, and the fact that providing SSN's is mandatory), the purpose of requiring SSN's, the routine uses for SSN's, and the effect of not providing SSN's. This statement may be on the form itself or included as an attachment to the form.

(3) *Reported information.* The State agency shall require, and the household shall report on a monthly basis, the following information about the household:

(i) Budget month income, medical, dependent care and shelter expenses, household composition, and other circumstances relevant to the amount of the food stamp allotment.

(ii) Any changes in income, medical, dependent care and shelter expenses, resources or other relevant circumstances affecting eligibility which the household expects to occur in the current month or in future months, or which occurred in the budget month.

(iii) Income and resources of an alien's sponsor and sponsor's spouse, where appropriate.

(iv) If the State agency uses a combined monthly report for food stamps and AFDC, the State agency shall clearly indicate on the form that non-AFDC food stamp households need not provide AFDC-only information.

(i) *Verification.* The State agency shall require the household to verify information on the monthly report as follows:

(1) Each month the household shall verify gross nonexempt income (except for unearned income which has not changed since the preceding monthly report), utility expenses (unless the household is using the standard utility allowance in accordance with § 273.9(d)), medical expenses, and all questionable information.

(2) The household shall verify alien status, social security numbers, residency, and citizenship, if these items have changed since the last report.

(3) The State agency may require the household to verify any other information on the monthly report.

(j) *State agency action on reports*—(1) *Processing.* Upon receiving monthly report, the State agency shall:

(i) Review the report to ensure accuracy and completeness.

(ii) Consider the report incomplete only if:

(A) It is not signed by the head of the household, an authorized representative or a responsible member of the household;

(B) It is not accompanied by verification of reported earned income; or

(C) It omits information necessary either to determine the household's eligibility or to compute the household's level of food stamp benefits.

(iii) Determine those items which will require additional verification, in accordance with paragraph (i) of this section.

(iv) Contact the household directly, and take action as needed, to obtain further information on specific items. These items include:

(A) The effect of a reported change in resources on a household's total resources; and

(B) The effect of a reported change in household composition or loss of a job or source of earned income on the applicability of the work registration requirement.

(v) Notify the household, in accordance with paragraph (j)(3)(ii) of this section, of the need to submit a report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(vi) Determine the household's eligibility by considering all factors, including income, in accordance with paragraphs (e) or (g) of this section.

(vii) Determine the household's level of benefits in accordance with § 273.10(e) based on the household composition determined in accordance with paragraph (f)(1) of this section. For those household members the following (except as provided in paragraph (f)(2) of this section) income and deductions shall be considered:

(A) Earned and unearned income received in the corresponding budget month or that has been averaged for the corresponding budget month. The State agency has the option of converting to a regular monthly amount the income that a household receives weekly or biweekly;

(B) The PA grant paid in the corresponding budget month or the PA grant to be paid in the issuance month. If the State agency elects to use the PA grant to be paid in the issuance month, the State agency shall ensure that: (*1*) Any additional or corrective payments are counted, either prospectively or retrospectively; and (*2*) the State agency shall disregard income received in the budget month from a terminated source, provided the household has reported the termination of the income either in the monthly report for the budget month or in some other manner which, as determined by the State agency, allows the State agency sufficient time to process the change and affect the allotment in the issuance month.

(C) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average.

(viii) Issue benefits in accordance with Part 274 of this chapter and on the time schedule set forth in paragraph (k) of this section.

(ix) Provide specific information on how the State agency calculated the benefit level if it has changed since the preceding month, either with the issuance or in a separate notification.

(2) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2.

(ii) The State agency shall notify a household of any change from its prior benefit level and the basis for its determination. If the State agency reduces, suspends or terminates benefits, it shall send the notice so the household receives it no later than either the date the resulting benefits are to be received or in place of the benefits.

(iii) The State agency shall notify a household, in accordance with paragraph (j)(3)(iii), if its monthly report is late or incomplete, or further information is needed.

(3) *Incomplete filing.* (i) If a household fails to file a monthly report, or files an incomplete report, by the specified filing date, the State agency shall give the household at least ten more days, from the date the State agency mails the notice to file a complete monthly report.

(ii) The State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing and the lack of that verification will adversely affect the household's allotment;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report.

(iii) If a household does not provide required verification, the State agency shall take the following actions:

(A) If the household does not verify earned income, the State agency shall regard the household's report as incomplete, take action in accordance with paragraphs (j)(3)(i) and (j)(3)(ii) of this section and, if appropriate, terminate the household in accordance with paragraph (m) of this section;

(B) If the household is using its actual utility costs to establish its shelter cost deduction in accordance with § 273.9(d) and it does not verify its actual utility expenses, the State agency shall not allow a deduction for such costs;

(C) If the household does not verify medical expenses, the State agency shall not allow a deduction;

(D) If the household does not verify other items for which verification is required, the State agency shall:

(*1*) Act on the reported change if it would decrease benefits.

(*2*) Not act on the reported change if it would increase benefits.

(k) *Issuance of benefits*—(1) *Timely issuance.* (i) For an eligible household which has filed a complete monthly report by the scheduled filing date, the State agency shall provide an opportunity to participate within the month following the budget month in a one-month system, or within the second month following the budget month in a two-month system.

(ii) The State agency shall provide each household with an issuance cycle so that the household receives its benefits at about the same time each month and has an opportunity to participate before the end of each issuance month.

(2) *Delayed issuance.* (i) If an eligible household files a complete monthly report during its extension period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date.

(ii) If an eligible household which has been terminated for failure to file a complete report files a complete report after its extended filing date, but before the end of the issuance month, the State agency may choose to reinstate the household by providing it with an opportunity to participate.

(iii) If an eligible household files a complete report after the issuance month, the State agency shall not provide the household with an opportunity to participate for that month.

(l) *Other reporting requirements*—(1) *Households which file monthly reports.* The State agency shall not require these households to submit any reports of changes other than the monthly reports which paragraph (h) of this section requires.

(2) *Households excluded from monthly reporting.* Households which are excluded from monthly reporting shall report changes in accordance with § 273.12.

(m) *Termination.* (1) The State agency shall terminate a household's food stamp participation if the household:

(i) Is ineligible for food stamps, unless suspended in accordance with paragraph (n) of this section:

(ii) Fails to file a complete report by the extended filing date; or

(iii) Fails to comply with a nonfinancial eligibility requirement, such as registering for employment.

(2) The State agency shall issue a notice to the household which:

(i) Complies with the requirements of § 271.2 for adequate notice;

(ii) Informs the household of the reason for its termination;

(iii) If the State agency allows reinstatement under paragraph (k)(2)(ii), explains how the household may be reinstated;

(iv) Informs the household of its rights to request a fair hearing and to receive continued benefits.

(3) The State agency shall issue the notice to the household so that it receives the notice no later than the household's normal or extended issuance date.

(n) *Suspension.* The State agency may suspend a household's issuance in accordance with this paragraph. If the State agency does not choose this option, it shall instead terminate households in accordance with paragraph (m) of this section.

(1) The State agency may suspend a household's issuance for one month if the household becomes temporarily ineligible due to a periodic increase in recurring income or other change not expected to continue in the subsequent month.

(2) The State agency shall continue to supply monthly reports to the household for one month.

(3) If the suspended household again becomes eligible, the State agency shall issue benefits on the household's normal issuance date.

(4) If the suspended household does not become eligible after one month, the State agency shall terminate the household.

(o) If a household has been terminated or suspended based on an anticipated change in circumstances, the State agency shall not count any noncontinuing circumstances which caused the prospective ineligibility when calculating the household's benefits retrospectively in a subsequent month.

(p) *Fair hearings*—(1) *Entitlement.* All households participating in a MRRB system shall be entitled to fair hearings in accordance with § 273.15.

(2) *Continuation of benefits.* (i) Any household which requests a fair hearing and does not waive continuation of benefits, and is otherwise eligible for continuation of benefits, shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first. However, if the State agency did not receive a monthy report from the household by the extended filing date and the household admits that it did not submit such a monthy report, the household shall not have its benefits continued.

(ii) The State agency shall provide continued benefits no later than five working days from the day it receives the household's request.

(iii) A household whose benefits have been continued shall file montly reports until the end of the certification period. If the fair hearing is with regard to termination for non-receipt of the monthly report by the State agency, then a new, complete monthly report for the month in question shall be submitted by the household before benefits are continued.

(iv) During the fair hearing period the State agency shall adjust allotments to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(q) *Recertification*—(1) *Timeliness.* The State agency shall recertify an eligible household which timely reapplies and provides it with an opportunity to participate in the household's normal issuance cycle.

(2) *Retrospective Recertification.* (i) The State agency shall recertify the household using retrospective information to determine the household's benefit level for the first month of the new certification period.

(ii) If the State agency is operating a two-month MRRB system, the State agency may delay reflecting information from the recertification interview in the household's eligibility and benefit level until the second month of the new certification period.

(iii) The State agency shall recertify households according to one of the three options set forth in paragraphs (q) (3), (4), or (5) of this section.

(3) *Option One: Recertification form.* (i) The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(ii) The State agency shall mail the form to the household, along with a notice of expiration, in place of the monthly report form.

(iii) The household shall submit the form to the State agency in accordance with paragraph (h)(1)(i) of this section.

(4) *Option Two: Monthly report and addendum.* (i) The State agency shall provide each household with a notice of expiration and monthly report form and an addendum to obtain all additional information necessary for recertification.

(ii) The State agency shall mail the monthly report form to the household along with the notice of expiration.

(iii) The household shall submit the monthly report to the State agency in accordance with paragraph (h)(1)(i) of this section.

(iv) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(v) The household shall submit the addendum to the State agency no later than the time of the interview.

(5) *Option Three: Signed Statement.* (i) The State agency shall recertify

households based on the monthly report and the interview.

(ii) At the interview, the State agency shall obtain all of the information not provided in the monthly report which is necessary for recertification.

(iii) The State agency shall ensure that it has on file a statement signed by the appropriate household member that the household has applied for recertification.

(6) *Interview.* (1) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency shall schedule the interview at any time during the last month of the old certification period.

(iii) If the State agency schedules the interview for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report to the interview.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[48 FR 54965, Dec. 8, 1983]

§ 273.22 Optional workfare program.

(a) *General.* This section contains rules which are to be followed in operating a Food Stamp Workfare Program. Under this program, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(b) *Program administration.* (1) Any State food stamp agency or other political subdivision in any State choosing to establish and operate a workfare program must submit for FNS approval a workfare plan in accordance with the requirements of this section. For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare plan.

(2) Political subdivisions are encouraged, but not required, to submit their plans to FNS through their respective State agencies. At a minimum, however, plans shall be submitted to the State agencies concurrent with their submission to FNS. Workfare plans and subsequent amendments shall not be implemented prior to their approval by FNS.

(3) When a State agency chooses to sponsor a workfare program by submitting a plan to FNS, it shall incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FNS, the State agency shall be responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (d) of this section. Upon notification that FNS has approved a workfare plan submitted by a political subdivision in its State, the State agency shall append that political subdivision's workfare plan to its own State Plan of Operations.

(4) The operating agency is that administrative organization which has been identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this section. The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision which submitted the workfare plan shall be responsible for monitoring the operating agency's compliance with the requirements of this section or of the workfare plan. The Secretary may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision which submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies have failed to comply with the requirements of this section or of the workfare plan.

(5) State agencies or other political subdivisions shall describe in detail in

the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, shall fulfill the provisions of this section. The plan shall include workload projections, staffing plans, interagency communication plans, and specific operational agreements developed by the agencies involved. The plan shall be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(6) State agencies or political subdivisions submitting a workfare plan shall submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operations shall be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget shall be included in the State agency's budget.

(7) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department shall determine which political subdivision will have its plan approved. Under no circumstances shall a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(c) *Operating agency responsibilities.* (1) The operating agency, as designated by the State agency or other political subdivision which submits a plan, shall be responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this section.

(2) *Establishment of job sites.* Workfare job slots may only be located in public or private, nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs which include but are not limited to designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(3) *Notifying State agency of noncompliance.* The operating agency shall notify the State agency of noncompliance by a household with a workfare obligation when it has determined that the household did not have good cause for the non-compliance. This notification shall occur within five days of such determination so that the State agency may make a final determination as provided in paragraph (d)(4) of this section.

(4) *Notifications.* Notices shall be established to be used as follows: (i) For the State agency to notify the operating agency of workfare-eligible households. Included in this notice shall be the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, this shall also be included in this notice. If the operating agency is computing the hours to be worked, the monthly allotment shall be included.

(ii) For operating agencies to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(iii) For operating agencies to notify the State agency of failure by a household to meet its workfare obligation.

(5) *Recordkeeping requirements.* (i) Files must be maintained which record activity by workfare participants. At a minimum, these records must contain job sites and hours assigned, hours completed, and communications with the State agency and job sites.

(ii) Program records shall be maintained in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. Fiscal records and accountable documents shall be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph, means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph, means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records shall be kept in a manner which will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (f)(4) of this section.

(6) *Reporting requirements.* The operating agency shall be responsible for providing information needed by the State agency to fulfill the reporting requirements stated in paragraph (d)(6) of this section.

(7) *Disclosure.* The provision of § 272.1(c) restricting the use and disclosure of information obtained from food stamp households shall be applicable to the administration of the workfare program.

(8) *Grievance procedures.* The operating agency may establish a system for handling complaints filed by workfare participants regarding their working conditions, perceived noncompliance by job sites with the provisions of this section, or any other area related to their workfare participation. This procedure need not handle complaints that can be pursued through a fair hearing nor may choosing not to use this procedure preclude a participant from requesting a fair hearing. If established, a description of this system shall be included in the workfare plan. Complaints which have not been resolved through this system and those against the operating agency shall be forwarded to the State agency and handled by the State agency according to the provisions of § 271.6. Workfare participants shall be informed of the grievance procedure.

(d) *State agency responsibilities.* (1) If a political subdivision chooses to operate a workfare program, the State agency shall cooperate with the political subdivision in developing a plan This includes providing caseload and cost estimates, as well as being available for consultation on the design of the administrative structure and interagency communications for the program. The State agency may decide what its workfare policy shall be in three areas. They are the definition of reimbursable expenses, the definition of good cause, and the sanctioning of members of divided households (paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section, respectively). The State agency may either accept the policies contained in these paragraphs or determine its own policies, subject to the requirements of section 20 of the Food Stamp Act of 1977, as amended, and the approval of FNS. Until the Food and Nutrition Service approves any alternate policies of the State agency, the provisions of paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section shall apply.

(2) The State agency shall determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (e)(1) of this section shall be referred to the organization which is the operating agency. The information identified in paragraph (c)(4)(i) of this section shall be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(3) The State agency shall inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(4) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency shall make a final determination as to whether or not such

failure occurred and whether there was good cause for any such failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction shall be processed as provided in paragraph (f)(6) of this section. The State agency shall immediately inform the operating agency of the months during which the sanction shall apply.

(5) *Recordkeeping requirements.* The State agency shall maintain in each household's casefile all workfare-related forms used by the State agency in meeting the requirements of this section.

(6) *Reporting requirements.* The State agency shall submit quarterly reports to FNS within 45 days of the end of each quarter identifying for that quarter for that State:

(i) The number of households referred to the operating agency as containing workfare-eligible recipients. A household shall be counted as referred each time it is referred to the operating agency.

(ii) The number of households assigned to jobs each month by the operating agency.

(iii) The number of individuals assigned to jobs each month by the operating agency.

(iv) The total number of hours worked by participants.

(v) The number of households against which sanctions were applied. A household being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(7) *State agency monitoring.* The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FNS. Should the State agency assume this responsibility, it would act as agent for FNS which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FNS directs otherwise. FNS shall be notified prior to the withholding of funds of the circumstances leading to that action. At a minimum, the State agency shall perform onsite reviews of each workfare program once within six months of the program's implementation and then in accordance with the Management Evaluation review schedule for that program area.

(e) *Household responsibilities*—(1) *Persons subject to workfare.* Household members subject to the work registration requirements as provided in § 273.7(a) shall also be subject to the workfare requirements. In addition:

(i) Those recipients exempt from work registration requirements due to being subject to the work incentive program (WIN) under Title IV of the Social Security Act shall be subject to workfare if they are currently involved less than 20 hours a week in WIN. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(ii) Those recipients exempt from work registration requirements due to the application for or receipt of unemployment compensation shall be subject to workfare requirements; and

(iii) Those recipients exempt from work registration requirements due to being a parent or other household member responsible for the care of a dependent child between the ages of six and twelve shall be subject to workfare requirements. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall be subject to the workfare requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(2) *Household obligation.* The maximum total number of hours of work required of a household each month shall be determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month except when the household wishes to end a disqualification due to noncompliance with workfare in accordance with paragraph (f)(8) of this section.

(f) *Other program requirements*—(1) *Priority placements.* The State agency or political subdivision submitting the plan shall indicate in the plan how it will determine priority for placement at job sites when the number of eligible participants is greater than the number of available positions at job sites.

(2) *Conditions of employment.* (i) Recipients may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a recipient under workfare together with any other hours worked in any other compensated capacity, including hours of participation in a WIN training program, by such recipient on a regular or predictable part-time basis, shall not exceed thirty hours a week. With the recipient's consent, the hours to be worked may be scheduled in such a manner that more than thirty hours are worked in one week, as long as the total for that month does not exceed the weekly average of thirty hours a week.

(ii) No participant shall be required to work more than eight hours on any given day, except that with the recipient's consent, more than eight hours may be scheduled.

(iii) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in § 273.7(i)(1) (iii) and (iv); and § 273.7(i)(2) (i), (ii), (iv), and (v).

(iv) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements, the additional work requirements established in § 273.7(e) (1), (2), (3), or (4), or the job search requirements established in § 273.7(f), such inability shall not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency shall, if possible, reschedule the missed activity. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification.

(v) The operating agency shall assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These shall be benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant.

(vi) All persons employed in workfare jobs shall be assured by the operating agency of working conditions provided other employees similarly employed.

(vii) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89-286), relating to health and safety conditions, shall apply to the workfare program.

(viii) Operating agencies shall not provide work to a workfare participant which has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies, due to hiring freezes, terminations, or lay-offs, shall not be filled by a workfare participant unless it can be demonstrated that such vacancies are a result of insufficient funds to sustain former staff levels.

(ix) The workfare jobs shall in no way infringe upon the promotional opportunities which would otherwise be available to regular employees.

(x) Workfare jobs shall not be related in any way to political or partisan activities.

(xi) Workfare assignments should, to the greatest extent possible, take into consideration previous training, experience, and skills of a participant.

(xii) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (g) of this section. Whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site), and therefore, USDA does not assume liability for any injury to or death of a workfare participant while on the job.

(xiii) The nondiscrimination requirement provided in § 272.7(a) shall apply to all agencies involved in the workfare program.

(3) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under § 273.7 during this time.

(4) *Participant reimbursement.* Participants shall be reimbursed by the operating agency for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs shall not include the cost of meals away from home. No participant cost which has been reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program shall be reimbursed under the food stamp workfare program. Only reimbursement of participant costs which are up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (g)(1) of this section. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. Pursuant to paragraph (d)(1) of this section, a State agency may decide what its reimbursement policy shall be.

(5) *Good cause.* For the purpose of this section, unless a State agency has determined its good cause policy pursuant to paragraph (d)(1) of this section, good cause shall include:

(i) Circumstances beyond a household member's control, such as, but not limited to: Illness; the illness or incapacitation of another household member requiring the presence of the workfare participant; a household emergency; or the lack of transportation when transportation is not provided by the operating agency;

(ii) Necessity for a parent or other responsible household member to care for a child between the age of six and 12 because adequate child care is not otherwise available;

(iii) Becoming exempt from the workfare eligibility requirements under the terms established in paragraph (e)(1) of this section.

(iv) Household moving out of the area of the workfare project.

(v) Instances where cost of transportation and other costs have exceeded $25 per month and are not being reimbursed by the operating agency.

(6) *Failure to comply.* (i) Where a workfare participant has been determined by the State agency to have failed or refused without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate. Such ineligibility shall continue until either the household meets the provisions of paragraph (f)(8) of this section or for 2 consecutive months, whichever occurs earlier. Within 10 days after receiving notification of the household's failure to comply with the requirements of this section, the State agency shall, if it determines that there is not good cause for the noncompliance, provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify the terms and conditions on which disqualification can be ended. Information shall also be included with the notification on the procedures and requirements contained in paragraph (f)(8) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, or following a fair hearing decision if a fair hearing is requested, in which the household would normally have received benefits. A household member shall not be required to perform work at a job site when the household is no longer receiving benefits unless the household has chosen to meet the conditions for ending disqualification specified in paragraph (f)(8) of this section. Until the dis-

qualification is actually invoked, the household, if otherwise eligible, will continue to have a workfare obligation.

(ii) Should a household have two or more consecutive months of noncompliance while being certified for food stamps, the total corresponding months of sanction shall be a cumulative total; that is, two months of noncompliance shall entail a four-month sanction. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow all the members of the household at the time of the noncompliance. None of those household members shall be eligible to participate in the food stamp program for the length of the sanction beginning at the point when the sanction can be placed against any one of them.

(iii) If a sanctioned household member joins another food stamp household, that household's eligibility and benefit level shall be determined as follows:

(A) *Income, resources, and deductible expenses.* The income and resources of the household member(s) disqualified for noncompliance with workfare shall count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall apply to the remaining household members.

(B) *Eligibility and benefit level.* An individual disqualified for noncompliance with workfare shall not be included when determining the household's size for the purpose of assigning a benefit level to the household or of comparing the household's monthly income with income eligibility standards. The State agency shall ensure that no household's coupon allotment is increased as a result of the disqualification of one or more household member for workfare noncompliance.

(7) *Fair hearings.* Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a State agency determination of failure to comply with the requirements of this section. The fair hearing requirements provided in § 273.15 shall apply. If a fair hearing is scheduled, the operating agency shall be available to participate in the hearing. The State agency shall provide the operating agency sufficient advance notice to permit the attendance of an operating agency representative.

(8) *Ending disqualification.* Following the end of the 2-month disqualification period for noncompliance with the workfare provisions of this section, a household may resume participation in the program if it applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if it makes application and is determined otherwise eligible) be permitted to resume participation if the member who failed to comply or any other workfare-eligible member of the household satisfies all outstanding workfare obligations. A workfare position shall be made available for a household which wishes to end disqualification in this manner.

(g) *Federal financial participation.* (1) Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program shall be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to $25 per month for any participant, as indicated in paragraph (f)(4) of this section. Such costs shall not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of $25 per month for any participant.

(2) *Funding mechanism.* The State agencies shall have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency shall also assure that records are being maintained which support the financial claims being made to FNS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(3) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs shall be identified by the State agency on the Financial Status Report (Form SF-269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds shall be maintained in accordance with § 277.12.

(4) *Sharing workfare savings*—(i) *Entitlement.* A political subdivision is entitled to share in the benefit reductions which occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.

(A) To begin employment means to appear at the place of employment and to begin working.

(B) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation which shall not end first participation shall be due to the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(ii) *Calculating the benefit reductions.* The political subdivision shall calculate benefit reductions from each workfare participant's employment as follows.

(A) Unless the political subdivision knows otherwise, it shall presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment which reflects a full months wages, earned income deduction, and dependent care deduction attributable to the new job.

(B) If the political subdivision knows of other changes beside the new job, which affect the household's allotment after the new job began, the political subdivision shall obtain the first allotment affected by an entire month's wages from the new job. The political subdivision shall then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision shall also replace any AFDC grant received after the new job with the one received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment shall be the benefit reduction.

(C) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(D) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment shall be corrected before the savings are calculated.

(iii) *Accounting.* The reimbursement from workfare shall be reported and paid as follows:

(A) The political subdivision shall report its enhanced reimbursement to the State agency in accordance with paragraph (g)(3) of this section.

(B) The Food and Nutrition Service shall reimburse the political subdivision in accordance with paragraph (g)(2) of this section.

(C) The political subdivision shall, upon request, make available for review sufficient documentation to justify the amount of the enhanced reimbursement.

(D) The Food and Nutrition Service shall reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (g)(1) of this section.

(h) *Coordination with other workfare-type programs.* State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this section are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (e)(1) of this section, maximum hours of work per week as provided in paragraph (f)(2)(i) of this section and the penalty for noncompliance as provided in paragraph (f)(6)(i) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation, the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more that 30 hours a week in accordance with paragraph (f)(2)(i) of this section. Any intent to coordinate programs should be described in the plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs may be requested and provided in accordance with § 272.3(c). Statutory provisions, shall not be waived.

(i) *Voluntary workfare program.* State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalty for failure to comply as provided in paragraph (f)(6) of this section shall not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (f)(2) of this section. In addition, all protections provided under paragraph (f)(2) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criteria, the Department reserves the right to withdraw approval.

(91 Stat. 958 (7 U.S.C. 2011-2029; sec. 1, Pub. L. 97-98, 95 Stat. 1282 (7 U.S.C. 2012))

[Amdt. 217, 47 FR 44697, Oct. 8, 1982, as amended by Amdt. 240, 48 FR 1173, Jan. 11, 1983]

PART 274—ISSUANCE AND USE OF FOOD COUPONS

Sec.

274.1 State agency issuance responsibilities.
274.2 Issuance systems.
274.3 Issuance of coupons through the mail.
274.4 Distribution of coupons.
274.5 Responsibilities of coupon issuers and bulk storage points.
274.6 Reconciliation.
274.7 Issuance record retention and security.
274.8 State agency reporting and destruction of unusable coupons.
274.9 Close-out of a coupon issuer.
274.10 Use or redemption of coupons by eligible households.
274.11 Return of coupons.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027), unless otherwise noted.

SOURCE: Amdt. 132, 43 FR 47927, Oct. 17, 1978, unless otherwise noted.

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§ 274.1 State agency issuance responsibilities.

(a) *Basic issuance requirements.* Each State agency is responsible for the timely and accurate issuance of coupons to eligible households in accordance with these regulations. Those households comprised of elderly or disabled members which have difficulty reaching an issuance office to obtain their regular monthly coupon allotments shall be given assistance in obtaining their coupons. State agencies shall assist these households by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means. The State level agency shall establish an issuance and accountability system which will insure that (1) only certified households receive benefits; (2) coupons are accepted, stored, and protected after delivery to receiving points within the State; (3) program benefits are timely distributed in the correct amounts; and (4) coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(b) *Contracting or delegating issuance responsibilities.* The State agency may assign to other parties such as banks, savings and loan associations, the Postal Service, community action agencies, and migrant service agencies the responsibility for issuance and storage of coupons.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for insuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FNS for all losses of coupons, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set forth in Part 277. The State agency shall contract only with responsible contractors who possess the ability to perform successfully under the terms and conditions of the proposed procurement. In making its selection, the State agency shall consider contractor integrity, the record of past performance, financial, and technical resources, and the availability of other necessary resources. State agencies may permit subcontracting of assigned issuance responsibilities. However, the primary contractor shall remain responsible and liable to the State agency for insuring that the terms of the contract are carried out.

(3) The State agency shall not assign the issuance of coupons to any retail grocery store authorized to redeem coupons from participant households. This restriction may be waived if the State agency can demonstrate, to the satisfaction of FNS, that such an arrangement would be in the best interests of the program.

(4) FNS does not encourage assignment of issuance activities to any entity in the same interrelated corporate structure with an authorized retail food store. However, such entities may be coupon issuers if they are fiscally autonomous, physically separate and employ a different trade name from the retail food store. FNS does not encourage the assignment of issuance activities to firms located within the confines of retail food stores. However, the State agency may contract with a bank or credit union located in such facilities provided that it is financially independent of the retail grocer and is chartered under Federal or State law.

(5) The State agency may contract with the U.S. Postal Service for the issuance of food coupons. The Department and the Postal Service have signed an agreement which governs coupon issuance by the Postal Service. A State agency's contract with the Postal Service cannot exempt the State agency from the requirements that it comply with these regulations. However, State agencies may negotiate contracts for issuance with the Postal Service on all terms and conditions as long as such provisions do not conflict with these regulations.

(6) In project areas or parts of project areas where FNS has required a photograph identification (photo ID) card system to be used, the State agency shall include in any contract or agreement with an issuing agent a provision establishing the agent's liability to the State agency for the face value of coupons issued in any ATP transaction where the ATP is found to have been stolen or otherwise not received by the household certified as eligible, when the issuing agent's cashier has not fulfilled the requirements contained in § 274.2(e)(8). In project areas or parts of project areas where FNS has granted a waiver or waivers of any provision(s) of the photo ID requirements based on determinations that State agency alternatives will not compromise the security of the ID system, a provision must be included conveying the same liability to issuing agents referred to in the preceding sentence.

(c) *State monitoring of coupon issuers.* (1) The State agency's accountability system shall include procedures for monitoring coupon issuers to assure that the day-to-day operations of all coupon issuers comply with these regulations, to identify and cor-

AVAILABLE

rect deficiencies and to report violations of the Act or regulations to FNS.

(2) The State agency shall conduct an onsite review of each coupon issuer and bulk storage point at least once every 3 years. All offices or units of a coupon issuer are subject to this review requirement. This review requirement may be fulfilled in part or in total by the performance reporting review system, Part 275. The State agency shall base each review on the specific activities performed by each coupon issuer or bulk storage point. A physical inventory of coupons shall be taken at each location and that count compared with perpetual inventory records and the monthly reports of the coupon issuer or bulk storage point. This review may be conducted at the offices of subissuers or at each issuance office when a coupon issuer or bulk storage point operates more than one office. The State agency may delegate this review responsibility to another unit of the State government or contract with an outside firm with expertise in auditing and accounting. State agencies may use the results of reviews of coupon issuers by independent audit or accounting firms so long as the food coupon issuance operations of the coupon issuer are included in the review. Except in unusual circumstances, the Postal Inspection Service will conduct onsite reviews of post office issuance operations.

(d) *State monitoring of duplicate participation.* (1) Each State agency shall establish a system to assure that no individual participates more than once in a month in the Food Stamp Program. To identify such individuals, the system shall use names and social security numbers at a minimum, and other identifiers such as birth dates or addresses as appropriate.

(i) Each State agency shall check to assure that no individual receives food stamps in more than one jurisdiction or in more than one household within the State. Checks to detect duplicate participation shall be made at the time of certification, recertification, and whenever a new member is added to the existing household. However, if the State agency can show that these timeframes are incompatible with its system, then the State agency shall check for duplicate benefits at least quarterly.

(ii) If the State agency detects a large number of duplicates, it shall implement other measures, such as more frequent checks or increased emphasis on prevention.

(iii) If the State agency provides assistance in lieu of coupons for SSI recipients or for households participating in cash-out demonstration projects, the State agency shall check to assure that no individual receives both coupons and other benefits provided in lieu of coupons. Checks to detect individuals receiving both food coupons and cash-out benefits shall be made at the time of certification, recertification, and whenever a new member is added to the existing household. However, if the State agency can show that these timeframes are incompatible with its system, then the State agency shall check for duplicate benefits when necessary, but no less often than annually.

(2) Processing standards for duplicate participation checks at certification and recertification.

(i) If the State agency chooses to check at the time of certification and recertification, the check for duplicates shall not delay processing of the application and provision of benefits beyond the normal processing standards in § 273.2(g).

(ii) If a duplicate is found in making such a check, the hit needs to be resolved in accordance with §273.2(f)(4)(iv) before the application can be processed and benefits provided. Delays in processing caused by this reduction shall be handled in accordance with § 273.2(h).

(3) State agencies shall develop follow-up procedures and corrective action requirements, including timeframes within which action must be taken, to be applied to data obtained from matching for duplicate participation. Follow-up actions shall include, but not be limited to, the adjustment of benefits and eligibility, filing of claims, disqualification hearings, and referrals for prosecution, as appropriate.

(4) FNS reserves the right to review State agencies' use of data obtained

from matching for duplicate participation and may require State agencies to take additional specific action to ensure that such data is being used to protect program integrity.

(91 Stat. 958 (7 U.S.C. 2011-2029); secs. 172 and 174 of Pub. L. 97-253, 96 Stat. 780 (7 U.S.C. 2020))

[Amdt. 132, 43 FR 47927, Oct. 17, 1978, as amended by Amdt. 227, 47 FR 49012, Oct. 29, 1982; Amdt. 211, 47 FR 53318, Nov. 26, 1982; Amdt. 243, 49 FR 49584, Dec. 21, 1984]

§ 274.2 Issuance systems.

The State agency shall arrange for the issuance of coupons to eligible households.

(a) *System classifications.* State agencies may issue food coupons through: (1) A household issuance record (HIR) card system in which the authorizing document is maintained at the issuance office, (2) an authorization to participate (ATP) system in which an authorizing document is distributed on a monthly basis to the household and surrendered to the coupon issuer when coupons are obtained, or (3) a direct coupon mailout system. In addition, the State agency may develop an automated issuance system, such as one using online issuance terminals, which cannot be readily categorized as either an HIR card or ATP system. Such alternative or modified systems shall meet the accountability requirements established in these regulations.

(b) *Advance planning documentation.* State agencies must comply with the procurement requirements of Part 277 for the acquisition, design, development, or installation of automated data processing (ADP) equipment. With certain exceptions detailed in Part 277, State agencies must receive prior approval for the design and acquisition of ADP systems through submission of advance planning documents (APD's).

(c) *Certification documentation.* The State agency shall use either a notice of change or an HIR card to document and transmit information on household eligibility or participation from the certification unit to the data management unit of the State agency.

(d) *HIR master file.* (1) The State agency shall establish an HIR master file which is a composite of the issuance records of all certified food stamp households. The State agency shall establish the HIR master file in a manner compatible with the system used for maintaining case records and divide the HIR master file into active and inactive HIR's. The HIR master file shall contain all the information needed to identify certified households, issue ATP's, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements of FNS.

(2) The HIR master file shall be kept current and accurate. HIR's will be updated, or terminated based upon notices of change and controls for expired certification periods.

(3) Before establishing an HIR for a participant household, the State agency shall check the HIR master file to insure that the housenold is not currently participating or disqualified. If the ATP is issued under the expedited service requirements of § 273.2(i), the State agency shall complete as much of the HIR master file check as possible prior to issuance of the ATP. Any uncompleted checks shall be completed after issuance of the ATP and appropriate corrective action shall be taken.

(e) *ATP issuance.* (1) ATP's issued by the State agency shall contain at a minimum: (i) Serial number; (ii) case name, address, and food stamp case number; (iii) coupon allotment of the household; (iv) expiration date; (v) project area for which that ATP is issued; and (vi) space for the signature of the household member or the authorized representative.

(2) In months when issuance has not been affected by a suspension of allotments, State agencies may stagger the issuance of ATP's to certified households through the 15th day of the month provided that each household's cycle shall be established so that it receives its ATP at the same time every month and it has an opportunity to obtain its coupons prior to the end of the month. In months in which benefits have been suspended under the provisions of § 271.7, State agencies

may stagger the issuance of ATP's to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger the issuance of ATP's from the date issuance resumes through the 15th of the month (if the 15th of the month has not already passed), or over a five day period following the resumption of issuance. In some circumstances, this may result in ATP's being issued after the end of the month in which the suspension occurred.

(3) The State agency shall clearly mark each ATP with an expiration date. The ATP shall be valid for the entire month of issuance unless an ATP has been issued after the 25th day of the month. For ATP's issued after the 25th of the month, the State agency must either:

(i) Issue an ATP which shall not expire for a period of not less than 20 calendar days or until the end of the following month; or

(ii) Issue an ATP valid only until the end of the month, but inform the household that a valid replacement ATP will be provided if the household is unable to transact the ATP before its expiration date.

(4) The State agency shall void all ATP's mutilated or otherwise rejected during the preparation process. The voided ATP's shall either be filed for audit purposes or destroyed, provided destruction is witnessed by at least two persons and the State agency maintains a list of all destroyed ATP's.

(5) The State agency may mail the ATP to the household or may use an alternate method of ATP delivery, except when the ATP is handled as specified in paragraph (g) or (h) of this section. When the ATP is mailed to the household it shall be mailed in a first class, nonforwarding envelope. The State agency may also use certified mail for ATP delivery, and shall use an alternate method of ATP delivery for households which report two losses of ATP's through the mail within a 6-month period.

(6) The State agency shall exercise the following security and controls for ATP's returned as undeliverable by the Postal Service:

(i) Record the ATP serial number, household name, and case number in a control log.

(ii) Keep the returned ATP's in secure storage with access limited to authorized personnel while attempts are made to locate the household. State agencies may void ATP's returned as undeliverable so long as households which report nondelivery can be provided immediate replacement ATP's.

(7) The State agency shall develop a method by which a household may designate an emergency authorized representative to obtain the household's allotment with a particular ATP. At a minimum, the method developed by the State agency shall require a space for the signature of the emergency authorized representative, and a space for a household member already named on the ID card to sign designating and attesting to the signature of the emergency authorized representative. Spaces for the designation of an emergency authorized representative may be on the ATP or the ID card (front or back) or on a separate form; however, the household shall not be required to travel to a food stamp office to execute the designation. Control comparable to that of a normal issuance transaction is achieved by the comparison of the signature of the household member named on the ID card with that designating the emergency authorized representative, and the signature on the ATP at the issuance point with the emergency authorized representative's signature attested to by the household member. A separate written designation is needed each time an emergency authorized representative is used.

(8) Prior to coupon issuance, the cashier shall ask the person requesting food stamps for identification as the certified participant, authorized representative or emergency representative. This person shall present to the cashier both the food stamp ID card and ATP. The cashier shall examine the ATP for authenticity, alteration, and date of expiration. If the ATP is valid the person requesting food stamps shall sign the ATP in the presence of the cashier. The cashier shall compare the signature on the ATP with the sig-

nature on the ID card. In cases where an emergency representative obtains the coupons, the signature, and identification check shall be governed by local agency policy as provided in paragraph (e)(7) of this section. If the person requesting coupons has already signed the ATP, the person shall be required to sign a separate piece of paper for signature comparison. If the signatures agree, coupons shall be issued in accordance with paragraph (h) of this section. If the household is required to present photo ID card in accordance with § 273.10(g)(4), coupons shall be issued only when the person presenting the ATP is pictured on the ID card. The cashier shall write the serial number of the photo ID card on the ATP. If the photo ID card appears to be multilated or altered, the cashier shall not issue the coupons, but shall advise the household to obtain a replacement ID card from the State agency.

(9) The State agency shall clearly differentiate between initial, supplemental, and replacement ATP issuances in its accountability system.

(10) The coupon issuer shall reconcile its issuance on a daily basis.

(11) The State agency shall provide for the issuance of coupon replacements due to improper manufacture or mutilation.

(i) The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(ii) If the State agency can determine the value of the improperly manufactured or mutilated coupons, the State agency shall replace the unusable coupons on a dollar-for-dollar exchange. After exchange, the State agency shall destroy the coupons in accordance with the procedures contained in § 274.8(b).

(iii) If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping "canceled" across the face of the coupons and forwarding the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.

(f) *HIR card issuance system.* In an HIR card issuance system, the State agency shall divide the issuance responsibilities among a receptionist, cashier, and supervisor.

(1) The receptionist shall maintain a separate daily tally sheet in duplicate for each cashier in the issuance unit to record the individual daily issuance transactions.

(2) The issuance supervisor shall initiate and distribute daily, or as appropriate, a cashier's daily report for each cashier to account for coupons issued.

(3) The receptionist shall check the ID card of the person wishing to obtain coupons against the HIR card from the HIR master file. An emergency representative may be needed when none of the persons named on the ID is available to obtain the household's coupons. The household shall not be required to travel to the food stamp office to execute the designation but an emergency representative must present a signed written statement from the head of the household or spouse authorizing the issuance of food stamps for the certified household. The emergency representative must also sign the written statement from the household and present the statement and the household ID card to obtain the allotment. Control comparable to that of a normal issuance transaction is achieved by the comparison of the signature of the household member named on the ID card with that designating the emergency authorized representative, and the signature on the HIR at the issuance point with the emergency authorized representative's signature attested to by the household member. If satisfied with the identification, the receptionist shall select the daily tally sheet of the cashier from whom the household will receive the allotment, enter information about the transaction, and initial the HIR card before it goes to the cashier.

(4) Upon receipt of the HIR card from the receptionist, the cashier shall enter the amount of coupons issued and initial the HIR card. The cashier shall also obtain the participant's signature on the HIR card and compare the signature with that on the ID card. If the signatures agree,

the cashier shall issue coupons in accordance with paragraph (h) of this section. If the household is required to present a photo ID card in accordance with § 273.10(g)(4), coupons shall be issued only when the person requesting food stamps is pictured on the ID card. The cashier shall write the serial number of the photo ID card on the HIR card. If the photo ID card appears to be mutilated or altered, the cashier shall not issue the coupons, but shall advise the household to obtain a replacement ID card from the State agency.

(5) The coupon issuer shall reconcile daily its issuances using the daily tally sheet and the cashier's daily report.

(6) In months when issuance has not been affected by a suspension of allotments, State agencies may stagger the issuance of coupons to certified households through the 15th of the month. In months in which benefits have been suspended under the provisions of § 271.7, State agencies may stagger the issuance of coupons to households following the end of the suspension. In such cases, State agencies may, at their option, stagger the issuance of coupons from the date issuance resumes to the 15th of the month (if the 15th of the month has not already passed), or over a five-day period following the resumption of issuance. In some circumstances, this may result in coupons being issued to certified households after the end of the month in which the suspension occurred.

(7) The State agency shall provide a household certified for program participation after the 25th of the month the opportunity to obtain its allotment for at least 20 calendar days or until the end of the following month.

(8) The State agency shall provide for the issuance of coupon replacements due to improper manufacture, or mutilation.

(i) The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(ii) If the State agency can determine the value of the improperly manufactured or mutiliated coupons, the State agency shall replace the unusable coupons on a dollar-for-dollar exchange. After the exchange, the State agency shall destroy the coupons in accordance with the procedures contained in § 274.8(b).

(iii) If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping "canceled" across the face of the coupons and forward the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.

(g) *Expedited service.* (1) The State agency shall manually prepare and issue ATP's at the local level if necessary to provide opportunities to participate to households certified on an expedited service basis in accordance with § 273.2(i), to comply with the processing standards for initial certification and recertification and for action on reported changes. To minimize the possibility of misuse of manually prepared ATP's, the State agency shall:

(i) Divide responsibility for the issuance of the ATP between at least two persons to prevent a single individual from having complete control over both the documents which authorize the issuance of ATP's and the ATP's themselves.

(ii) Record, immediately, on the HIR master file, the serial number and other issuance information from the ATP.

(2) For initial certifications, the State agency shall prevent duplicate or unauthorized participation by checking its records prior to issuing the manual ATP to assure the household is not currently certified for that month or is not disqualified from participation.

(3) In an HIR card system, the State agency shall provide an opportunity to participate to households certified on an expedited basis in accordance with § 273.2(i), to comply with processing standards for initial and recertifications and for action on reported changes.

(h) *Replacement of an ATP stolen or lost in the mail prior to receipt.* (1) The State agency shall issue a replacement ATP for ATP's stolen or lost in the mail prior to receipt only if the ATP is reported stolen or lost in the mail in the period of its intended use and if the household requesting the replacement has not already been issued two replacements in the previous 5 months. For ATP's issued after the 25th of the month, the period intended for their use is 20 days from their issuance or the last day of the month following issuance, depending on which option in § 274.2(e)(3)(i) the State agency has chosen. Replacements of ATP's stolen or destroyed after receipt are handled under § 273.11(i)(2). When a household reports the nondelivery of an ATP the State agency shall:

(i) Determine if the ATP was valid when issued, actually mailed, and if sufficient time has elapsed for delivery;

(ii) Determine, to the maximum extent practicable, the legitimacy of the request for replacement of the lost or stolen ATP (through such means as determining whether the original ATP has been transacted, and if so, whether the signature on the original ATP matches that on the replacement);

(iii) Prepare and have the participant sign a statement that the original ATP will be returned to the State agency if recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts. The statement may be mailed in if the participant is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative. The statement shall be retained in the casefile;

(iv) Provide a replacement no more than 10 days after report of nondelivery has been received;

(v) Deny or delay replacement of the ATP in cases in which documentation indicates that the request for replacement is fraudulent. However, the household shall be informed of its right to a fair hearing to contest the denial or delay of the ATP. The denial or delay of the replacement ATP shall remain in effect pending the hearing decision. The State agency may combine the fair hearing with a fraud hearing, in accordance with § 273.16(d)(1). To deny or delay a replacement, the State agency must have documentation indicating the likelihood of fraud, such as a match between the signature on the original ATP that has been transacted and the signature on the replacement request, or the notation (by the issuing agent) of the recipient's correct food stamp identification number (unless the household reports that its ID was stolen) on an original ATP that has been transacted.

(vi) Take other action warranted by the reported nondelivery.

(2) On at least a monthly basis the State agency shall report all ATP's reported as stolen or lost in the mail to the appropriate office of the Postal Inspection Service. The State agency shall assist the Postal Service during any subsequent investigation and shall, upon request, supply the Postal Service with facsimiles of the original ATP, if transacted, and replacement ATP, and a copy of the nonreceipt statement. The State agency shall advise the Postal Service if the original ATP is not transacted.

(3) The State agency may place a household in an alternate issuance system when circumstances exist that indicate that the household may not receive their benefits through the normal issuance system, for example, when a household has a history of reported nonreceipt of ATP's. After two requests for replacement of original or replacement ATP's reported as nondelivered in a 6-month period, the State agency shall issue benefits to that household under an alternate issuance system. The two requests may be for either an original or a replacement ATP. The State agency shall keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened. The placement of a household on an alternate issuance system and the length of time the household is on this system is not subject to the fair hearing process.

(i) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon book issuance provid-

AVAILABLE

ed by FNS, except as provided in paragraphs (i)(1), (i)(2), and (i)(3) of this section. The table provides participants with an efficient and economical distribution of the available coupons and coupon book types and assists FNS in maintaining proper inventory levels. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books.

(1) The State agency may deviate from the table if the specified coupon books are unavailable.

(2) Exceptions from the table are authorized for blind and visually handicapped participants who request that all coupons be of one denomination.

(3) If a household is eligible for an allotment of $1, $3, or $5, the State agency shall adjust those allotments to $2, $4, and $6, respectively.

(4) Residents of shelters for battered women and children, as such shelters are defined in § 271.2 and which are not authorized by FNS to redeem through wholesalers, may request that all or part of their coupons be of the 1-dollar denomination and State agencies are authorized to grant this request where feasible.

(j) *New York City food stamp replacement issuance procedures and rapid access reconciliation system.* Due to New York City's particularly severe problem with excessive losses caused by food stamp fraud, this unique food stamp issuance and reconciliation system has been developed for use in New York City.

(1) *Replacement of a stolen or destroyed ATP.* ATP's will be valid for eight calendar days from the scheduled date of delivery. The recipients can only request a replacement ATP after four business days following the scheduled date of delivery of the ATP.

(i) On or after the fourth business day following the date the ATP was scheduled to be delivered, the recipient may request a replacement ATP at the local certification office by completing an affidavit reporting nonreceipt or destruction of his/her ATP.

(ii) The local certification office shall check the affidavit against a listing of ATP's that were issued to recipients served by that office.

(A) If the listing shows that the recipient has not been issued an ATP, and the household is certified to receive benefits, the certification office shall determine why the ATP was not issued and provide immediate authorization for issuance of an ATP.

(B) If the listing shows that the recipient was issued an ATP, the certification office shall hold the affidavit in suspense for five business days to allow for the original ATP to expire. The recipient shall be instructed to return to the certification office after the passage of five business days.

(iii) By the close of the fifth business day following the date a recipient requested the replacement, the certification office shall check the affidavit against a listing of redeemed ATP's for recipients served by that office.

(A) If the recipient's ATP is not on the listing, a replacement shall be authorized immediately by the certification office.

(B) If the recipient's ATP is on the listing (i.e. the ATP is shown to have been redeemed), the recipient shall be referred to New York City's central Fraud Prevention Unit.

(iv) The Fraud Prevention Unit shall compare the signature of the recipient requesting the replacement against the signature on a photocopy of the redeemed ATP.

(A) If the signatures match, the replacement request shall be denied. The recipient may request an immediate review by the Fraud Prevention Unit supervisor. If the recipient is dissatisfied with the supervisor's determination, he/she may request a fair hearing.

(B) If the signatures do not match, the Fraud Prevention Unit shall check a photocopy of the redeemed ATP for the reconciliation number written on the back of the ATP by the issuance agency at the time of redemption. This number is taken from the recipient's food stamp identification card.

(C) If the reconciliation number on the identification card of the recipient requesting the replacement is the same as the reconciliation number on the redeemed ATP, the request for replacement shall be denied, again subject to supervisory review and a fair hearing at the request of the recipient as provided in paragraph (j)(1)(iv)(A) of this section.

(D) If neither the signature nor the reconciliation number match, a replacement shall be immediately authorized by the Fraud Prevention Unit.

(v) In instances in which a recipient reports both his/her ATP as nondelivered, or destroyed and food stamp identification card as lost, stolen, or destroyed the requirement that the reconciliation number on the identification card of the recipient must be different from the reconciliation number on the redeemed ATP may be waived.

(vi) In cases where a recipient's eight-day ATP card has expired, the recipient may exchange the expired ATP for immediate replacement by the eligibility worker. That replacement ATP shall be valid to the end of the month or for 20 days if issued after the 25th of the month.

(2) *Right of appeal.* Recipients being denied a replacement ATP shall be informed of their right of appeal.

(i) When denied a replacement for an ATP reported as lost or stolen, the recipient may request an internal supervisory examination of the determination.

(ii) If dissatisfied with the review, the recipient may request a fair hearing.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33385, June 8, 1979; Amdt. 146, 46 FR 1427, Jan. 6, 1981; Amdt. 191, 46 FR 50277, Amdt. 190, 50283, Oct. 9, 1981; Amdt. 215, 47 FR 20743, May 4, 1982; Amdt. 211, 47 FR 53318, Nov. 26, 1982; Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 226, 48 FR 1175, Jan. 11, 1983; Amdt. 250, 48 FR 22131, May 17, 1983]

§ 274.3 Issuance of coupons through the mail.

(a) *Types of mail issuance systems.* The State agency may issue some or all of the coupon allotments through the mail. State agencies shall determine whether to use a regular mail issuance system or a direct coupon mailing system. A regular mail issuance system is one which uses an authorization document as an intermediate step in mail issuance. A direct coupon mailing system is one which does not use an authorization document. The State agency shall design the controls and forms to operate a regular or direct coupon mail issuance system.

(b) *Mail issuance controls and records.* (1) The State agency shall establish and maintain a mail issuance log to record requests for mail issuance and the date and amount of coupons issued.

(2) All operations involving the maintenance of coupon inventory records, assembly of coupon allotments, envelope stuffing, and preparation of envelopes for mailing shall, if at all possible, be performed by at least two persons. If these functions are performed by one person, a second party review shall be made to verify coupon inventory, the reconciliation of the mail issuance log, and the number of mailings prepared. Offices using prestuffing methods must provide for dual accountability during the stuffing and addressing operations and maintain a perpetual coupon inventory control and mail issuance logs.

(3) The State agency shall establish controls which prevent a participant from obtaining coupons through both the mail and over-the-counter issuance systems.

(4) The State agency shall consult with appropriate postal officials concerning the schedule for mailing coupons, the approximate volume and value of the mailings, the type of envelopes to be used, and maintain liaison with postal officials to facilitate prompt, efficient, and safe delivery of coupon mailings to households.

(5) At least first-class mail shall be used in mailing coupon allotments. The coupons shall be mailed in sturdy nonforwarding envelopes or other nonforwarding mailing packages.

(6) In months in which issuance has not been affected by a suspension of allotments, direct mail issuance shall be staggered through the 10th day of the month and may be staggered through the 15th day provided that each household will likely receive its coupons on the same date every

month. The State agency shall ensure that coupons are not mailed to concentrations of households with the same ZIP code on the same day. FNS may provide waivers to State agencies that present adequate documentation to indicate that theft from the mail will not represent a significant problem.

(7) In months in which issuance has been suspended under the provisions of § 271.7, direct mail issuance shall be staggered either from the date issuance resumes following the end of the suspension to the last day left in the State agency's normal staggering schedule, or over a five-day period beginning the day issuance resumes, whichever is a longer period of time. This requirement shall not apply to State agencies that have received waivers from the requirements of paragraph (b)(6) of this section.

(8) State agencies which rely exclusively on mail issuance shall insure that participants receive allotments on a timely basis and can receive expedited issuance in accordance with § 273.2(i) and § 274.2(g). State agencies must also provide timely replacement issuances either from the mailing center or local facilities. If the State agency cannot provide for expedited issuance through the mail issuance system, the State agency shall insure that it has an alternative issuance system to provide expedited service in accordance with § 273.2(i) and § 274.2(g).

(c) *Coupons lost in the mail prior to receipt.* (1) The State agency shall issue replacement coupons only if the coupons are reported stolen from the mail or lost in the mail in the period of their intended use and the household requesting the replacement has not already been issued two replacements in the previous 5 months. The period of intended use for coupons is the month in which the coupons are issued. For coupons issued after the 25th of the month, the period intended for their use is 20 days from their issuance or the last day of the month following issuance whichever the State agency chooses. Replacements for coupons destroyed after receipt are handled under § 273.11(i)(1). When a household reports the nondelivery of an allotment or partial allotment of coupons issued through the mail the State agency shall:

(i) Determine if the coupons were validly issued, actually mailed, and if sufficient time has elapsed for delivery. Coupons are "in the mail" when deposited with the Postal Service. If a delivery of a partial allotment is reported, the State agency shall determine the value of the coupons not delivered, and that the report of receipt of a partial allotment is corroborated by evidence that the coupon loss was due to damage in the mail before delivery or a discrepancy in the issuance unit's inventory. If the receipt of a partial allotment is due to an error in the issuance unit, the remainder of the allotment shall be issued regardless of the number of times the household has received replacements in the past 5 months.

(ii) Review the mail issuance log for the return of undelivered coupons.

(iii) Prepare and have the participant sign a statement (if the coupons have not been returned) that the coupons will be returned to the State agency if recovered by the household and that the household is aware of the penalties for intentionally misrepresenting the facts. The statement may be mailed in if the participant is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative. The statement shall be retained in the casefile.

(iv) Provide the replacement no more than 10 days after the report of nondelivery has been received.

(v) Record the report of nondelivery and the date in the issuance log.

(vi) Take other action warranted by the reported nondelivery.

(2) On at least a monthly basis the State agency shall report all losses to the postal authorities. State agencies shall, in cooperation with the Postal Service, attempt to determine the cause of each nondelivery and take appropriate corrective action. State agencies shall also report to the postal authorities all patterns of losses in particular project areas or neighborhoods.

(3) The State agency may place a household in an alternate issuance system when circumstances exist that

indicate that the household may not receive their benefits through the normal issuance system, for example, when a household has history of reported nonreceipt coupons. After two reports by a household of nondelivery *of either full or partial allotments* in a 6-month period, the State agency shall utilize other issuance methods for that household. These may be reports of nondelivery of an original or a replacement allotment. The State agency shall keep the household on the alternate issuance system for the length of time that the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened. The placement of a household on an alternate issuance system and the length of time the household remains on this system is not subject to the fair hearing process.

(4) FNS will assume financial liability for coupons lost in the mail except as follows:

(i) In mail issuance reporting areas with $300,000 or more of mail issuance in a quarter, the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of 0.75 percent during the 2nd, 3rd, and 4th quarters of fiscal year 1983, and in excess of 0.5 percent per quarter thereafter, of the dollar value of each reporting unit's quarterly mail issuance.

(ii) In mail issuance reporting areas with less than $300,000 of mail issuance in a quarter, the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of $2,250 per quarter during the 2nd, 3rd and 4th quarters of fiscal year 1983 and $1,500 per quarter thereafter.

(iii) For the purpose of this section, "mail issuance" means all original coupon issuances distributed through the mail. "Mail loss" means all replacements of mail issuances except for replacements of returned mail issuances.

(iv) The liability shall be computed using data from Form FNS-259, *Mail Issuance Loss Report*, or other reporting document agreed to by FNS and the State agency, which is submitted for the quarter for the particular administrative division below the State agency level agreed to by FNS and the State agency as the reporting unit.

(v) Where the State agency reports mail issuance loss data on Statewide losses only, the State agency shall work in consultation with FNS to identify a particular administrative division below that of the State agency that will permit reporting and computation of mail issuance losses and liability assessment. FNS reserves the right to make the final determination on reporting requirements and on administrative divisions within the State for the purpose of determining and assessing liability for mail issuance losses. FNS also reserves the right to revise such determinations as necessary. Revisions will be communicated to State agencies by FNS. Liability assessment will be based on the revised reporting requirements for the next full fiscal quarter.

(d) *Mail issuance reporting on the food coupon accountability report.* (1) All mail issuance activity, including the value of coupon mail issuance replacements, shall be reported on the Form FNS-250, food coupon accountability report.

(2) Original allotments subsequently recovered by the issuance office during the current month shall be returned to inventory and noted on the mail issuance log. The replacement issuance for allotments received during the current month shall not be reported on the Form FNS-250. The coupon issuer shall notify the post office of the return of coupon allotments previously reported as lost in the mail.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47927, Oct. 17, 1978, as amended by Amdt. 146, 46 FR 1428, Jan. 6, 1981; Amdt. 190, 46 FR 50284, Oct. 9, 1981; Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 245, 48 FR 15225, Apr. 8, 1983; Amdt. 250, 48 FR 22130, May 17, 1983; Amdt. 262, 49 FR 50597, Dec. 31, 1984]

§ 274.4 Distribution of coupons.

(a) *Coupon inventory management.* The State agency shall establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with the requirements of these regulations.

(1) The State agency shall monitor the coupon inventories of the coupon issuers and bulk storage points to insure inventories are at proper levels and are not in excess of the reasonable needs of coupon issuers. The State agency shall consider, among other things, in determining the reasonable inventory needs, the ease and feasibility of resupplying such inventories from storage supplies within the State as well as from the manufacturer. The inventory levels at coupon issuers and bulk storage points should not exceed a 6-month supply, taking into account coupons on hand and on order.

(2) The State agency shall establish an accounting system for monitoring the inventory activities of coupon issuers. The State agency shall review the Form FNS-250, from coupon issuers, and bulk storage points, to determine the propriety and reasonableness of the inventories. Form FNS-261, advices of shipment, Form FNS-300, advices of transfer, or an approved State agency form, and reports of returned mail issued coupons, reports of replacements of mail issued coupons, reports of improperly manufactured or mutilated coupons, reports of shortage or overage of food coupon books and physical inventory controls shall be used by the State agency to assure the accuracy of monthly reports and their compliance with required inventory levels and the accuracy and reasonableness of coupon orders.

(b) *Coupon controls.* The State agency shall establish control and security procedures to safeguard coupons, similar to those used to protect currency. The State agency and all persons or organizations acting on its behalf, shall take the necessary precautions to: (1) Safeguard coupons from theft, embezzlement, loss, damage, or destruction; (2) avoid unauthorized transfer, negotiation, or use of coupons; (3) avoid issuance and transfer of altered or counterfeit coupons; and (4) promptly report in writing to FNS any loss, theft, or embezzlement of coupons. The exact nature of security arrangements will depend on State agency evaluation of local coupon issuance and storage facilities. These arrangements must permit the timely issuance of coupons while affording a reasonable degree of coupon security.

(c) *State coupon requisitioning.* The State agency shall arrange for the ordering of coupons and the prompt verification and written acceptance of the contents of each coupon shipment. The State agency shall furnish FNS with appropriate delivery hours and the names of the persons authorized to sign delivery acknowledgments.

(d) *FNS review of requisitions.* FNS will assess the reasonableness and propriety of food stamp requisitions submitted by State agencies based on prior inventory changes and will notify the State agency of any adjustments made to requisitions.

(e) *FNS shipment of coupons.* FNS will ship coupons, printed in such denominations as it may determine necessary, directly to State agency designated receiving points. FNS will promptly advise the State agency in writing when coupons are shipped to receiving points using Form FNS-261. Coupons shall be considered delivered to the State agency when FNS or its carrier has a signed receipt.

(f) *Shipment of coupons by the State agency.* (1) Once coupons have been accepted by receiving points within the State, any further movement of the coupons between coupon issuers and bulk storage points within the State is at the risk of the State agency. To minimize the risk of loss, coupons are usually shipped by armored car, armored vehicle, armored tractor/trailer, air, or the Postal Service. Movement of coupons by any of these methods of transportation is normally appropriate because stringent security is applied and the risk of loss is usually borne by the carrier.

(2) In every instance when coupons are transported the person(s) transporting coupons shall:

(i) Acknowledge their receipt, in writing;

(ii) Accord the coupons much protection as is reasonable;

(iii) Advise issuance supervisors of the routes to be taken, the shipment departure time and the estimated arrival time.

(g) *Specimen coupons.* FNS will provide nonnegotiable specimen coupons to State agencies and firms upon written request for the purpose of educating and training employees on program operations.

(1) The State agency or firm shall store specimen coupons in secure storage with access limited to authorized personnel. The State agency or firm shall keep a perpetual record of specimen coupon inventory.

(2) Specimen coupons that are mutilated, improperly manufactured, or otherwise unusable, shall be destroyed by the State agency or firm. Such destruction shall be witnessed by two persons and noted on the perpetual inventory record maintained for specimen coupons.

§ 274.5 Responsibilities of coupon issuers and bulk storage points.

(a) *Receipt of coupons.* Coupon issuers and bulk storage points shall promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control, and storage of coupons.

(b) *Inventory levels.* Coupon issuers and bulk storage points shall maintain a proper level of coupon inventory not in excess of reasonable needs, taking into consideration the ease and feasibility of resupplying such coupon inventories. Such inventory levels should not exceed the 6-month supply provided for in § 274.4(a).

(c) *Monthly reporting.* Coupon issuers and bulk storage points shall report monthly to FNS, through the State agency, using Form FNS-250. The State agency shall prescribe a report due date, taking into consideration the time needed to perform the functions required in § 274.8. These reports shall be signed by the coupon issuer or appropriate corporate official, certifying that the information is true and correct to the best of that person's knowledge and belief. Reports shall be submitted to FNS by the State agency by the 45th day following the end of the report month.

(d) *Supporting documentation.* Coupon issuers and bulk storage points shall submit to the State agency supporting documentation which will allow verification of the monthly report. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, and issuances. In those States using an ATP issuance system, coupon issuers shall submit transacted ATP's batched according to each day's activity, in accordance with the schedule prescribed by the State agency but, in any case, not less often than monthly.

(e) *Improperly manufactured or mutilated coupons.* Coupon issuers and bulk storage points shall cancel improperly manufactured or mutilated coupons or coupon books by writing or stamping "canceled" across the face of the coupon(s) and coupon book(s). Depending upon State agency policy, the coupon issuer or bulk storage point shall forward the coupons with the appropriate documentation to the State agency, or hold the coupons in secure storage pending examination and destruction by the State agency at the coupon issuer or bulk storage point location.

§ 274.6 Reconciliation.

(a) *Verification of ATP issuance.* (1) In ATP issuance systems, the State agency shall verify the number of transacted ATP's received from the coupon issuers and the total value of authorized coupon issuances.

(2) ATP batches not reconciled shall be maintained intact by the State agency until the discrepancy is resolved with the coupon issuer.

(3) Following receipt and verification of the final batch of ATP's for the month, the State agency shall determine the total value of authorized issuances for each coupon issuer. Any expired or out-of-State ATP's shall be handled as coupon issuer errors and shall not be reported as authorized issuances on the reconciliation report required in § 274.8(a).

(b) *Reconciliation of ATP's with the HIR master file.* The State agency shall post and reconcile all transacted ATP's against the HIR master file. The reconciliation of ATP's shall be accomplished at the level in the State agency where the HIR was created from the notices of change. This posting and reconciliation shall, at a minimum, include for each ATP a comparison of the total coupon allotment. The State agency shall merge the records of the manually prepared initial, supplemental, and replacement ATP issuances with the HIR master file prior to posting and reconciling the transacted ATP's. Because ATP's issued after the 25th of the month may be redeemed in the following month and because supplemental ATP's may be issued during the month, the State agency shall establish a mechanism for the redemption and reconciliation of more than one valid ATP in 1 month. However, ATP's issued to replace ATP's reported lost or stolen shall be separately identifiable, as the transaction of both the original and replacement ATP represents a duplicate issuance which must be reported on a reconciliation report required in § 274.8(a).

(c) *Identification of unreconciled ATP's.* The State agency shall identify all transacted ATP's that are not reconciled with the HIR master file as expired, duplicate, altered, stolen, counterfeit, or out-of-State. Unreconciled ATP's shall be reported to FNS or a reconciliation report as required in § 274.8(a)(5). This identification shall be used to establish the liabilities of the State agency under Part 276 and for determination of corrective or claims action.

(d) *HIR reconciliation to the case files.* In an HIR issuance system, the State agency shall conduct a semiannual comparison of the active and inactive HIR cards against the case files. At a minimum, 20 percent of both open and closed HIR cards shall be selected at random for the comparison. The State agency may limit selection of cases for review to those which were active during the previous 6 months. If the State agency discovers an HIR card during the review for which a case file cannot be located, the State agency shall conduct a total review of the active case files. The State agency shall immediately document and report any discrepancies discovered during the semiannual review to FNS.

§ 274.7 Issuance record retention and security.

(a) *Availability of issuance records.* The State agency shall maintain issuance records for a period of 3 years from the month of origin. This period may be extended at the written request of FNS.

(1) Issuance records shall include, at a minimum: Notices of change, HIR cards, inventory records, transacted ATP's or similiar authorizing documents, Forms FNS-250, and substantiating documents, cashier's daily reports, receptionist's daily tally sheets, and the HIR master file.

(2) In lieu of the records themselves, microfilm, microfiche, or computer tapes may be maintained, as long as they are easily retrievable for audit review purposes.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similiar controls from the point of initial receipt through the issuance and reconciliation process. The State agency shall also insure the security and control of ATP's in transit from the manufacturer to the State agency.

(c) *Accountable documents.* HIR cards, ATP's, and mandated photo ID cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(1) Preprinted serial numbers;

(2) Secure storage;

(3) Access limited to authorized personnel;

(4) Bulk inventory control records;

(5) Subsequent control records maintained through the point of issuance or use; and

(6) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(d) *Notice of change and ID card security.* For notices of change which initiate, update, or terminate the HIR and blank ID cards, the State agency shall at a minimum, provide secure storage and limit access to authorized personnel.

(91 Stat. 968 (7 U.S.C. 2011-2029))

[Amdt. 132, 43 FR 47927, Oct. 17, 1978, as amended by Amdt. 191, 46 FR 50277, Oct. 9, 1981; Amdt. 221, 47 FR 35169, Aug. 13, 1982]

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) *State agency reporting.* (1) The State agency shall report to FNS when a project area, reconciliation point, or coupon shipment receiving point is created, changed, or terminated at least 30 days prior to the effective date of the action. A reconciliation point is that point in the State agency where transacted ATP's are reconciled with the HIR master file. Although initial notification may be made by telephone, the State agency shall confirm the information in writing as soon as possible.

(2) The State agency shall review Form FNS-250 received monthly from coupon issuers and bulk storage points for accuracy, completeness, and reasonableness. The State agency shall attest to the accuracy of these reports and submit them to FNS so that they will be received in FNS by the 45th day following the end of the report month.

(3) The State agency shall submit to FNS a Form FNS-259, *Food Stamp Mail Issuance Report*, for each project area using a mail issuance system. the State agency shall verify the issuance by a comparison with the issuance on the appropriate coupon issuer's Form FNS-250. This report shall be submitted to FNS so that it will be received in FNS by the 45th day following the end of each quarter.

(4) FNS shall review each Form FNS-250 submitted through the State agency for completeness, accuracy, and reasonableness and shall reconcile inventory with shipping records. FNS will review State agency verification of coupon issuer and bulk storage point monthly reports. FNS may supplement this review by unannounced spot checks of inventory levels and coupon security arrangements at selected coupon issuers and bulk storage points.

(5) Each State agency operating an ATP issuance system shall report monthly to FNS on the reconciliation of the transacted ATP's against the HIR Master File. This report shall be made by completing Form FNS-46, Food Stamp Reconciliation Report. The report shall be prepared at the level of the State agency where the actual reconciliation of the transacted ATP's to the HIR Master File takes place. This report shall be submitted to FNS no later than 90 days following the end of the report month. The first report shall be due for the month of February 1981.

(6) State agencies shall report information regarding coupon issuance and participation on the Form FNS-388 report as follows:

(i) State agencies shall telephone the FNS-388, *State Coupon Issuance and Participation Estimates*, data and mail the reports to the FNS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the FNS-388 data shall be reported by telephone and mailed on the first work day after the 19th. The FNS-388 report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The FNS-388 report shall provide Statewide estimated totals of issuance and participation (persons and households) for the current month, revised estimates or actual totals for the preceding month, and actual participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, Statewide non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September FNS-388 reports, State agencies shall provide project area breakdowns of coupon issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the FNS-388 data to the FNS regional office for review and comment. FNS shall monitor the accuracy of the estimated dollar value of coupons issued as reported on the FNS-388 against the Statewide total dollar value of coupon as reported by the issuance agents on the FNS-250, Food Stamp Accountability Report, for the corresponding month. FNS shall monitor the accuracy of the Statewide estimated number of households and persons participating as reported on the FNS-388 report against the Statewide actual total participation as reported on succeeding FNS-388 reports and against the semi-annual project area participation totals attached to the March and September FNS-388 reports. The FNS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) 4 percent and the estimates for the previous month be within (+) or (−) 2 percent of the actual levels. State agencies shall explain any unusual circumstances that cause coupon issuance and/or participation data to not meet these accuracy standards. If a State agency fails to meet these accuracy standards, FNS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

(b) *Destruction of unusable coupons.* (1) The State agency shall either require coupon issuers and bulk storage points to send unusable coupons to the State agency for destruction or hold the unusable coupons in secure storage pending examination and destruction by the State agency at the coupon issuer or bulk storage point location. After verification of the reports from the coupon issuers and bulk storage points, the State agency shall destroy improperly manufactured or mutilated coupons or coupon books received from or stored at the location of the coupon issuers and bulk storage points, and unusable coupons or coupon books returned by households, provided that:

(i) It had been determined that the value of coupons does not exceed $500.00 per coupon issuer or bulk storage point for any month; and

(ii) The State agency has determined that the coupons were in fact improperly manufactured or mutilated.

(2) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing, or cutting so they are not negotiable. Two State agency officials shall witness and certify the destruction and forward the Form FNS-471, *Coupon Account and Destruction Report* with the Form FNS-250.

(3) If the value of the coupons to be destroyed exceeds $500.00 per coupon issuer or bulk storage point per month, the State agency shall request FNS approval prior to any destruction of the coupons.

(4) If either the coupon issuer, the bulk storage point or the State agency cannot determine whether coupons or coupon books were in fact improperly manufactured or establish the value of the coupons involved, the State agency shall promptly forward a written statement of findings and the canceled coupon(s) or coupon book(s) to FNS for a determination.

[Amdt. 132, 43 FR 47927, Oct. 17, 1978, as amended by Amdt. 171, 46 FR 2335, Jan. 9, 1981; Amdt. 189, 47 FR 17767, Apr. 23, 1982; Amdt. 237, 47 FR 57669, Dec. 28, 1982; 50 FR 20549, May 17, 1985]

§ 274.9 Close-out of a coupon issuer.

(a) *Definition of responsibilities.* Whenever the services of a coupon issuer or bulk storage point are terminated, the State agency shall perform the responsibilities described below. If a coupon issuer or bulk storage point has more than one functioning unit and one of these facilities is terminated, the coupon issuer or bulk storage point shall fulfill the responsibilities described in paragraphs (b) and (c) of this section. The coupon issuer or bulk storage point shall notify the State agency of the pending termination of any of its services prior to the actual termination. The State agency shall promptly notify FNS.

(b) *Close-out accountability.* The State agency shall perform a closeout audit of a coupon issuer or bulk storage point within 30 days of termination of the issuance or storage point. The State agency shall report the findings of the audit to FNS immediately upon its completion. If the audit determines that the final FNS-250 is incorrect, the State agency shall promptly provide a corrected report to FNS.

(c) *Transfer of coupon inventory.* (1) Prior to the transfer of coupon inventory to another coupon issuer or bulk storage point, the State agency shall perform an actual physical count of coupons on hand.

(2) The State agency shall transfer the inventory to another coupon issuer or bulk storage point preferably within the same project area. The transfer of coupons shall be properly reported and documented by both the point being terminated and the point receiving the inventory.

(d) *Maintenance of participant service.* (1) At least 30 days before actual termination of a coupon issuer, the State agency shall notify project area participants of the impending closure. Notification shall include identification of alternative issuance locations and available public transportation. The State agency shall post notices at the offices of the coupon issuer of the impending closure and may use mass media or ATP stuffers to advise participants about the expected closure of the issuance office.

(2) If closure of the issuer will affect a substantial portion of the caseload or a specific geographic area, the State agency shall take whatever action is necessary to maintain participant service without interruption.

(3) If a coupon issuer or bulk storage point is to be closed for noncompliance with contractual requirements and alternative issuance facilities or systems are not readily available, the State agency may continue to use the coupon issuer or bulk storage point for a limited time. In these situations, the State agency shall perform weekly onsite reconciliations of coupon issuance. The State agency shall continue to actively seek other issuance or storage alternatives.

§ 274.10 Use or redemption of coupons by eligible households.

(a) *Eligible food.* A household member should sign each coupon book issued to the household. The coupons may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with coupons. Uncanceled and unendorsed coupons of $1 denomination, returned as change by authorized retail food stores, may be presented as payment for eligible food. All other detached coupons may be accepted only if accompanied by the coupon book which bears the same serial number as the detached coupons. It is the right of the household or the authorized representative to detach the coupons from the book.

(b) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(c) *Communal dining.* Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for that purpose.

(d) *Residents of certain institutions.* (1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization or institution which is authorized by FNS to redeem the coupons through wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(2) Eligible residents of a group living arrangement may use coupons issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem coupons at

wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(3) Residents of shelters for battered women and children as defined in § 271.2 may use their coupons to purchase meals prepared especially for them at a shelter which is authorized by FNS in accordance with § 278.1 to redeem at wholesalers, or which redeems at retailers as the authorized representative of participating households in accordance with § 278.2(g).

(e) *Alaskan hunting/fishing equipment.* Eligible households residing in areas of Alaska determined by FNS as areas where access to retail food stores is difficult and who rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to them to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons, and knives, but excluding firearms, ammunition, and other explosives.

(f) *Use of ID cards.* Upon request, the household or the authorized representative shall present the household's ID card to the retail food store or meal service when exchanging food coupons for eligible food.

(g) *Prior payment prohibition.* Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services. Neither shall coupons be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(h) *Cash change.* When change in an amount less than $1 is required in a coupon transaction, the household shall receive the change in cash not to exceed 99 cents.

[Amdt. 132, 43 FR 47927, Oct. 17, 1978, as amended by Amdt. 189, 47 FR 17767, Apr. 23, 1982]

§ 274.11 Return of coupons.

(a) *Refund of purchase requirement.* In the event of voluntary termination of participation in the program by a household or death of the head of the household, properly issued coupons may be returned to FNS for a refund on the same ratio of cash to coupons as was applied by the State agency in the issuance of the coupons to the household.

(b) *Filing refund request.* A request for a refund shall be submitted to the State agency. The request for such a refund shall be made in accordance with the following requirements:

(1) It shall be in ink or typed.

(2) It shall contain the claimant's address.

(3) It shall be dated and signed.

(4) The unused coupons shall be attached. The State agency shall provide a copy of the refund request to the household as a receipt for the coupons.

(c) *FNS payments.* State agencies shall forward claims to FNS for payment. The claimant's request for a refund, a completed Form FNS-287, Request for Reimbursement or Notification of Return of Unused Food Coupons for Refund, and the unused coupons shall be forwarded to FNS by the State agency.

(d) *Limit on refunds.* Six months after elimination of the purchase requirement, no refunds shall be paid for coupons returned to FNS. Coupons will be accepted by FNS for accounting and disposition only. Households should be reminded that even if they are not currently eligible, properly issued coupons may be redeemed by them at any time in authorized retail stores.

(e) *Old series coupon exchange.* Households which still have old series coupons shall be entitled to a dollar for dollar exchange of old series coupons for new series coupons. When only a 50-cent coupon is offered for exchange or the coupons offered include an odd number of 50-cent coupons, a new series $1 coupon will be given for the odd 50-cent coupon. Households in possession of old series coupons shall submit the coupons and a request for exchange to the State agency. State agencies may make direct exchange to claimants or request FNS to make the exchange.

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PART 275—PERFORMANCE REPORTING SYSTEM

Subpart A—Administration

Sec.
275.1 General scope and purpose.
275.2 State agency responsibilities.
275.3 Federal monitoring.
275.4 Record retention.

Subpart B—Management Evaluation (ME) Reviews

275.5 Scope and purpose.
275.6 Management units.
275.7 Selection of sub-units for review.
275.8 Review coverage.
275.9 Review process.

Subpart C—Quality Control (QC) Reviews

275.10 Scope and purpose.
275.11 Sampling.
275.12 Review of active cases.
275.13 Review of negative cases.
275.14 Review processing.

Subpart D—Data Analysis and Evaluation

275.15 Data management.

Subpart E—Corrective Action

275.16 Corrective action planning.
275.17 State corrective action plan.
275.18 Project area/management unit corrective action plan.
275.19 Monitoring and evaluation.

Subpart F—Responsibilities for Reporting on Program Performance

275.20 ME review reports.
275.21 Quality control review reports.
275.22 State corrective action plans.
275.23 Administrative procedure.

Subpart G—Program Performance

275.25 Determination of State Agency program performance.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027), unless otherwise noted.

EDITORIAL NOTE: OMB control numbers relating to this Part 275 are contained in § 271.8 published at 50 FR 2660, Jan. 18, 1985.

Subpart A—Administration

§ 275.1 General scope and purpose.

(a) Under the Food Stamp Act, each State agency is responsible for the administration of the Food Stamp Program in accordance with the Act, Regulations, and the State agency's plan of operation. To fulfill the requirements of the Act, each State agency shall have a system for monitoring and improving its administration of the program. The State agency is also responsible for reporting on its administration to FNS. These reports shall identify program deficiencies and the specific administrative action proposed to meet the program requirements established by the Secretary. If it is determined, however, that a State has failed without good cause to meet any of the program requirements established by the Secretary, or has failed to carry out the approved State plan of operation (of which the State corrective action plan is a part), the Department shall suspend and/or disallow from the State such funds as are determined to be appropriate in accordance with Part 276 of this chapter.

(b) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the share to 60 percent of all administrative costs for State agencies whose cumulative allotment error rate with respect to basic program eligibility, overissuance, and underissuance of coupons as determined by quality control is less than 5 percent. Those State agencies whose cumulative allotment error rate is 5 percent or more are required to specify and carry out the corrective action which they propose to take to reduce errors. "Quality Control" means monitoring in an effort to reduce the rate of errors in determining basic eligibility and benefit levels.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980]

§ 275.2 State agency responsibilities.

(a) *Establishment of the performance reporting system.* (1) The State agency shall establish a continuing performance reporting system to monitor program administration and program operations. The method for establishing each component of the system is identified and explained in Subparts B through F of this part. The components of the State agency's performance reporting system shall be:

(i) Data collection through management evaluation (ME) reviews and quality control (QC) reviews;

(ii) Analysis and evaluation of data from all sources;

(iii) Corrective action planning;

(iv) Corrective action implementation and monitoring; and

(v) Reporting to FNS on program performance.

(2) The State agency shall designate a person on a full-time basis to coordinate the activities of the Performance Reporting System. Exceptions to the requirement for a full-time coordinator may be granted with prior FNS approval only when a State agency can demonstrate that a part-time coordinator can effectively coordinate the activities of the system. In addition, the State agency shall designate an organizational entity within the State structure which shall be at a level of authority to ensure corrective action is effected at the State and project area levels.

(b) *Staffing standards.* The State agency shall employ sufficient State level staff to perform all aspects of the Performance Reporting System as required in this part of the regulations. The staff used to conduct QC reviews shall not have prior knowledge of either the household or the decision under review. Where there is prior knowledge, the reviewer must disqualify her/himself. Prior knowledge is defined as having:

(1) Taken any part in the decision that has been made in the case; (2) any discussion of the case with staff who participated in the decision; or (3) any personal knowledge of or acquaintance with persons in the case itself. To ensure no prior knowledge on the part of QC or ME reviewers, local project area staff shall not be used to conduct QC or ME reviews; exceptions to this requirement concerning local level staff may be granted with prior approval from FNS. However, local personnel shall not, under any circumstances, participate in ME reviews of their own project areas.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980]

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the following reviews described below in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conducting of these reviews to reduce the frequency of entry into the State agency. FNS Regional Offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. Any deficiencies detected in program or system operations which do not necessitate long range analytical and evaluative measures for corrective action development shall be immediately corrected by the State agency. Within 60 days of receipt of the findings of each review established below, State agencies shall develop corrective action addressing all other deficiencies detected in either program or system operations and shall ensure that the appropriate corrective action plan is amended. Whenever circumstances warrant, the FNS Regional Office may require the submission of an amendment to the State corrective action plan in less than 60 days from receipt of findings.

(a) *Reviews of State agency's administration/operation of the Food Stamp Program.* FNS shall conduct an annual review of all functions performed at the State agency level in the administration/operation of the program such as but not limited to: Certification and issuance procedures, security and control procedures, accountability, reconciliation, record keeping and reporting procedures, training, outreach, complaint procedures, fraud, fair hearings, disaster preparedness, State agency supervision of the functions performed by the project area including bilingual services, standards for points and hours, and a review of the Plan of Operation and the State manual.

(b) *Reviews of State agency's performance reporting system.* FNS will review each State agency's performance reporting system on an annual basis (in terms of management evaluation (ME) reviews conducted by the State agency). The review will include but not be limited to a determination of whether or not the State is complying with FNS regulations, an assessment of the State's methods and procedures for conducting ME reviews including sampling techniques, and an assessment of the data collected by the State in conducting the reviews.

(c) *Validation of State Agency error rates.* FNS shall validate each State agency's active case error rate, payment error rate, and underissuance error rate, as described in § 275.25(c), during each annual quality control review period. FNS shall validate the State agency's negative case error rate, as described in § 275.25(c), only when the State agency's payment and underissuance error rates for an annual review period appear to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b) (2), (5), (6), or (7), and its negative case error rate for that period is less than the national weighted mean negative case error rate applicable to the period of enhanced funding. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(e)(6).

(1) *Active case error rate.* The validation review of each State agency's active case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed active cases. The Federal review sample for completed active cases is determined as follows:

State annual active case sample size	Federal annual sample size
1,200 and over	n = 400.
300-1,199	n = 150 + 0.277 (N-300).
Under 300	n = 150

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FNS Regional Office may choose to verify any aspects of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) FNS Regional Offices will assist State agencies in completing active cases reported as not complete due to household refusal to cooperate.

(iv) FNS will also review the State agency's sampling procedures, estimation procedures, and the State agency's system for data management to ensure compliance with § 275.11 and § 275.12.

(v) FNS validation reviews of the State agency's active sample cases will be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FNS will begin the remainder of each State agency's validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) *Payment error rate.* The validation review of each State agency's payment error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(3) *Underissuance error rate.* The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(4) *Negative case error rate.* The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed negative cases. The Federal review sample for completed negative cases is determined as follows:

State annual negative case sample size	Federal annual sample size
800 and over	n=160.
150-799	n=75 + 0.130 (N-150).
Under 150	n=75.

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny or terminate a household's participation.

(iii) FNS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(iv) FNS will begin each State agency's negative sample case validation review as soon as possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

(5) *Arbitration.* Each FNS Regional Office will appoint an individual to arbitrate disputes between the State agency and the FNS Regional Office concerning individual case findings and the appropriateness of actions taken to dispose of individual cases on a case-by-case basis. This individual will not be directly involved in the validation effort and will accept questions of certification policy only upon written request by the State agency.

(d) *Assessment of corrective action.* (1) FNS will conduct a comprehensive annual assessement of a State's corrective action process by compiling all information relative to that State's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: Identified deficiences are analyzed in terms of causes and magnitude and are properly included in either the State of Project Area/Management Unit Corrective Action Plan, the State agency is implementing corrective actions according to the appropriate plan, target completion dates for reduction or elimination of deficiencies are being met, and corrective actions are effective. In addition, FNS will examine the State's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices.

(2) In addition, FNS will conduct onsite reviews of selected corrective actions at least semiannually or as frequently as considered necessary to ensure that States are implementing proposed corrective actions within the timeframes specified in the State and/or project area/management unit corrective action plans and to determine the effect the corrective action is having. The on-site reviews will provide States and FNS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

(Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2029), as amended by Pub. L. 96-249, 94 Stat. 364-365, May 26, 1980)

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 260, 49 FR 6303, Feb. 17, 1984]

§ 275.4 Record retention.

(a) The State agency shall maintain Performance Reporting System records to permit ready access to, and use of, these records. Performance Reporting System records include information used in data analysis and evaluation, corrective action plans, corrective action monitoring records in addition to ME review records and QC review records as explained in paragraphs (b) and (c) of this section. To be readily accessible, system records shall be retained and filed in an orderly fashion. Precautions should be taken to ensure that these records are retained without loss or destruction for the 3-year period required by these regulations. Information obtained on individual households for Performance Reporting System purposes shall be safeguarded in accordance with FNS policies on disclosure of information for the Food Stamp Program.

(b) ME review records consist of thorough documentation of review findings, sources from which information was obtained, procedures used to review Food Stamp Program requirements including sampling techniques and lists, and ME review plans. The State agency must submit documented evidence of review findings to the FNS Regional Office upon request for purposes of evaluating State corrective action plans.

(c) QC review records consist of Forms FNS-380, Worksheet for Integrated AFDC, Food Stamps and Medicaid Quality Control Reviews, FNS-380-1, Integrated Review Schedule, FNS-245, Negative Quality Control Review Schedule, and Form FNS-248, Status of Sample Selection and Completion; other materials supporting the review decision; sample lists; sampling frames; tabulation sheets; and reports of the results of all quality control reviews during each review period.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6304, Feb. 17, 1984; Amdt. 262, 49 FR 50597, Dec. 31, 1984]

Subpart B—Management Evaluation (ME) Reviews

§ 275.5 Scope and purpose.

(a) *Objectives.* Each State agency shall ensure that project areas operate the Food Stamp Program in accordance with the Act, regulations, and FNS-approved State Plan of Operation. To ensure compliance with program requirements, ME reviews shall be conducted to measure compliance with the provisions of FNS regulations. The objectives of an ME review are to:

(1) Provide a systematic method of monitoring and assessing program operations in the project areas;

(2) Provide a basis for project areas to improve and strengthen program operations by identifying and correcting deficiencies; and

(3) Provide a continuing flow of information between the project areas, the States, and FNS, necessary to develop the solutions to problems in program policy and procedures.

(b) *Frequency of review.* (1) State agencies shall conduct a review once annually for large project areas/management units; once every two years for medium project areas; and once every three years for all small project areas. Large project areas are those which report a monthly active caseload of more than 7,000 households; medium project areas are those which report a monthly active caseload of 250 to 7,000 households; and small project areas are those which report a monthly active caseload of less than 250 households. However, no more than 70 percent of the total number of project areas in a State shall be reviewed on the once every three year cycle. Thus, if the proportion of small project areas in a State exceeds 70 percent of all project areas, that portion in excess of 70 percent would have to be reviewed once a year or once every two years. It is at each State's option to determine which small project areas will be scheduled for more frequent reviews. Reports of active monthly caseload shall be based upon the most current and accurate information available at the time the review schedule is developed.

(2) In accordance with § 275.15 of this part, States may also conduct full or partial ME reviews when additional information is needed to determine the cause, extent, or specific nature of an identified deficiency. While State agencies are not required to use ME review procedures to obtain the needed information, this information must be secured through some data source. When no other source can provide the information, the State agency shall conduct an on-site review which could (but would not have to) follow ME review procedures. The determination as to when these reviews are conducted and the method of review to be employed will be dictated by the type of information needed. Reviews could be conducted in several project areas or in selected sub-units within a project area and could involve reviewing a general area of program oper-

ation or be directed to a single program requirement. While use of ME review procedures would be recommended by many instances, State agencies may use any procedure, provided that the needed information is obtained. An example of when this review activity shall be initiated is when States receive complaints which indicate that a deficiency exists in some aspect of the certification process, but the available information is inconclusive regarding the extent of the deficiency and no other source can provide this information.

(3) FNS may require the State agency to conduct on-site reviews when a serious problem is detected in a project area which could result in substantial dollar or service loss. Depending upon the nature of the problem, such reviews could involve use of ME review procedures to investigate general areas of program operation or a specific program requirement.

(4) States shall also establish a system for monitoring those project areas' operations which experience a significant influx of migratory workers during such migrations. This requirement may be satisfied by either scheduling ME reviews to coincide with such migrations as identified in § 275.20(a)(7) of this part or conducting special reviews, as identified in paragraph (b)(2) of this section, which may involve using ME review procedures or any other methods. However, regardless of the approach the State takes, the State shall contact local migrant councils, advocate groups or other organizations, in the project area to ensure that migrants are receiving the required services.

(c) *Conducting ME reviews.* (1) FNS may grant a waiver to States regarding the ME review procedures contained in § 275.7 and § 275.9 of this part. To obtain a waiver, States must submit requests which specify the reason for the waiver, the review procedures which would be waived, and what would be done in place of the procedures in the regulations. FNS approval of requests will be based upon one or more of the following criteria:

(i) A determination that use of the procedures contained in these regulations would not provide the desired information due to a State's or project area's unique situation; (ii) extraordinary circumstances which require temporary redirection of review activity; (iii) equal or better review coverage will be provided by the State's proposed procedures; and (iv) the effectiveness of the alternate procedures in terms of improved data and corrective action.

(2) Requests for a waiver from these regulations and the State's proposed procedures shall be submitted to the appropriate FNS Regional Office 60 days prior to implementation. When a State's request for a waiver is approved, the State's approved procedures shall be considered binding upon the State and will be examined during FNS reviews of the State's ME subsystem. If, at any time, FNS determines that the State has not complied with approved procedures, or that they are ineffective, FNS will revoke its approval and may require that additional reviews be conducted of those project areas reviewed under the State's procedures.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980, as amended by Amdt. 262, 49 FR 50597, Dec. 31, 1984]

§ 275.6 Management units.

(a) *Establishment of management units.* For the purpose of ME reviews, State agencies may, subject to FNS approval, establish "management units" which are different from project areas designated by FNS for participation in the program. For example, State-established welfare districts, regions or other administrative structures within a State may be so designated. Management units can be designated as either large, medium, or small project areas. However, establishment of management units solely for the purpose of reducing the frequency of review or sampling requirements will not be approved by FNS.

(b) *FNS approval of management units.* State agencies shall submit requests for establishment of management units to FNS, which shall have final authority for approval of such units as well as any changes in those previously approved by FNS.

(1) The following minimum criteria must be met prior to requesting FNS approval:

(i) The proposed management unit must correspond with existing State-established welfare districts, regions, or other administrative structures; and

(ii) The unit must have supervisory control over Food Stamp Program operations within that geographic area and have authority for implementation of corrective action.

(2) In submitting the request for FNS approval, the State agency shall include the following information regarding the proposed management unit:

(i) That the proposed management unit meets the minimum criteria described in paragraphs (b)(1) (i) and (ii) of this section;

(ii) Geographic coverage, including the names of the counties/project areas within the unit and the identification (district or region number) and location (city) of the office which has supervisory control over the management unit;

(iii) Food Stamp Program participation, including the number of persons and number of households;

(iv) The number of certification offices;

(v) The number of issuance units;

(vi) The dollar value of allotments issued as reflected in the most recent available data; and

(vii) Any other relevant information.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 23637, Apr. 8, 1980]

§ 275.7 Selection of sub-units for review.

(a) *Definition of sub-units.* Sub-units are the physical locations of organizational entities within project areas responsible for operating various aspects of the Food Stamp Program, exclusive of Post Offices which may issue coupons. Sub-units shall be classified based upon functional responsibility as one or more of the following.

(1) *Certification office.* Any sub-unit which has the responsibility for accepting applications, conducting interviews, determining eligibility, maintaining (or having easy access to) casefiles, and transmitting information to the data management unit shall be designated as a certification office.

(2) *Issuance office.* Any sub-unit which has the responsibility for issuing coupons to participating households and storing coupons shall be designated as an issuance office.

(3) *Data management unit (DMU).* Any sub-unit which has the responsibility for maintaining the household issuance record (HIR) masterfile shall be designated as a DMU.

(4) *Bulk storage point.* Any sub-unit which has the responsibility for accepting and storing supplies of coupons prior to shipment to issuance sites shall be designated as a bulk storage point.

(5) *Reporting point.* Any sub-unit which has the responsibility for preparation and submittal of Form FNS-250 for more than one issuance unit shall be designated as a reporting point, regardless of whether or not the unit actually issues coupons.

(b) *Reviewing issuance offices and bulk storage points.* (1) As required in § 274.1(c)(2) of this chapter, State agencies must conduct on-site reviews of each bulk storage point and coupon issuer at least once every 3 years. This review requirement may be satisfied through the ME review subsystem. States using the ME review subsystem to satisfy this requirement shall adhere to the following sample size requirements.

(i) For each project area reviewed annually, randomly select at least one-third of the issuance offices and bulk storge points in the project area during each review. During the first annual review, the State shall select at least one-third of the sub-units from all such sub-units. Assuming the above, the State shall, in the second annual review, select at least one-third of the total number of sub-units only from those not reviewed in the first year. In the third review, the State shall review all sub-units not included in the first and second reviews. If the number of sub-units in any of these classifications is less than three, the State shall select and review at least one during each review regardless of whether it has been reviewed in a previous annual review. While States may adjust these procedures to accommodate their individual circumstances, States must ensure that all issuance offices and bulk storge points are reviewed once every three years and that during each review the minimum requirements of paragraph (e)(2) of this section are met.

(ii) For each project area reviewed once every two years, the State would have to schedule reviews to ensure that all issuance offices and bulk storage points are reviewed at least once every three years. During the first review, for example, the State could randomly select one-half of the sub-units in the above classifications for on-site review. Assuming the second review is scheduled during the 3-year period, the State could review all sub-units not included in the first review and meet the once every three year requirement. The State could also choose to review all sub-units during a single review to meet the requirement of § 274.1 of this chapter. If the project area has only one sub-unit in any of these classifications, that sub-unit shall be reviewed during each ME review.

(iii) For each project area reviewed once every 3 years, review all issuance offices and bulk storage points in the project area during each ME review.

(2) States not using the ME review sub-system to meet their monitoring responsibility for issuance offices and bulk storage points may omit from ME reviews the requirements in § 275.8(c)(3)(iii); § 275.8(d) (1) and (2); and § 275.8(e) (3) and (4) of this part during ME reviews as these requirements would be reviewed through the State's other system for monitoring coupon issuers and bulk storage points. However, States which do not use the ME review sub-system to satisfy the coupon monitoring requirement shall adhere to the sub-unit selection requirements of § 275.7 (e) or (f) during each ME review. States which only partially integrate this monitoring effort and ME reviews shall ensure that the requirements of both are satisfied, but may apply the provisions of this section as appropriate.

(c) *Combined responsibilities.* (1) When a sub-unit has more than one of the areas of functional responsibility specified in paragraph (a) of this section, it shall be included in each applicable classification and if selected for review, all functions performed shall be examined. For example, if a sub-unit has an organizational entity which certifies households and also has an entity which regularly issues coupons, the sub-unit shall be designated as both a certification and an issuance office. Thus, in an HIR issuance system, sub-units designated as issuance offices would usually also be designated as DMU's since the HIR masterfile is usually maintained at the issuance site in this system.

(2) Certain sub-units shall not be designated as having combined responsibilities, even though they may perform certain functions related to more than one of the areas. For example, coupon issuers must maintain a level of coupon inventory to ensure that participants' needs are met on a daily basis but do not supply other issuance sites with bulk supplies of coupons. Such a sub-unit would not be classified as a bulk storage point. Certification offices may issue coupons in emergency situations or to meet the requirements of expedited service but do not routinely issue coupons to households under standard certifications. In these and similar situations, the sub-unit would be classified based upon its primary function exclusively. However, when any sub-unit is selected, all program requirements specified in § 275.8 which the sub-unit has responsibility for, shall be reviewed.

(d) *Itinerant issuance and certification points.* Units which certify households and/or issue coupons as satellites of a central sub-unit shall not be classified as independent sub-units. Units may be identified as itinerant when they do not operate on a regular basis, retain certification records, store coupons, transmit information directly to the DMU and/or develop FNS-250 reports independently. Examples of such units include mobile units, short term or seasonal operations, and units which may operate on a regular basis but do not meet the criteria for a sub-unit described in paragraph (a) of this section. However, when a sub-unit is selected for review which acts as a parent unit for itinerant service points, at least one itinerant point per sub-unit shall be reviewed if operational at the time of the review.

(e) *Selection of sub-units in project areas with caseloads of 3,000 or more participating households.* State agencies shall select a random sample of sub-units for on-site review for each project area with an average caseload of 3,000 or more (except as allowed in paragraph (e)(5) of this section) to ensure that the sub-units selected are representative of the project area's operation of the program.

(1) *Universe and sample frames for sub-units.* The universe for sub-units shall include all sub-units which are operational in the project area at the time of the ME review. The sample frames for sub-units shall be lists of sub-units based upon the classifications specified in paragraphs (a) (1), (2), (3), (4) and (5) of this section. Sub-units with combined responsibilities shall be included in each applicable list. Each list shall constitute a separate sample frame from which separate samples shall be selected.

(2) *Sample sizes.* State agencies shall use random sampling when selecting sub-units for on-site review to ensure that the sub-units selected are representative of the project area's operation of the program; except as allowed in paragraph (e)(5) of this section. From each of the sample frames established in paragraph (e)(1) of this section, a separate sample shall be selected based upon the sample sizes in the following table. Sub-units which have the responsibility for centralized operation of some special aspect of the program (such as fair hearings, complaints, outreach, etc.) Shall be selected and reviewed for that function.

Number of sub-units	Required sample size
≥100	9
75 to 99	8
50 to 74	7
25 to 49	6
10 to 24	5
7 to 9	4
4 to 6	3
≤3	([1])

[1] 2 or all, whichever is less

(3) *Sample selection.* (i) State agencies may use any random sampling procedure when selecting sub-units for on-site review, provided the resultant sample is random and unbiased. When the number of sub-units in a given frame is small, the simplest technique will suffice. In frames containing a large number of sub-units, State agencies may wish to use a systematic sampling approach as it is often the least time consuming and is relatively easy to administer.

(ii) When a sub-unit(s) with combined responsibilities is selected from a frame, it shall be considered to have been selected from all frames in which it appears and the sample sizes adjusted for those frames as appropriate. When sample frames contain sub-units with combined responsibilities, States shall select samples sequentially to avoid the potential problem of selecting more sub-units than necessary. First, States shall select from the frame containing the greatest proportion of sub-units with combined responsibilities. If two or more frames have equal proportions of sub-units with combined responsibilities, the frame with the smallest total number of sub-units shall be sampled from first. The State shall then eliminate from the other frames all sub-units which were included in the first frame, regardless of whether they were selected or not. Selecting from the frame with the greatest proportion of sub-units with combined responsibilities first will ensure that these sub-units have a relatively high probability of selection in the first sample selected. Elimination of these sub-units from other frames will ensure that the first sample is not increased in subsequent selections. If the remaining frames continue to contain sub-units listed in more than one frame, the process would continue, i.e., the frame containing the greatest proportion of such sub-units shall be sampled from second and all sub-units included in that frame eliminated from any other frames in which they appear. This process shall continue until no sub-unit appears in more than one frame.

(iii) When ME is used to satisfy the monitoring requirement of § 274.1(c)(2) of this chapter the State shall, after following the sample selection provisions of this section, select additional issuance or bulk storage points from those which were included in the frame prior to selection but were eliminated as required in paragraph (e)(3)(ii) of this section to satisfy the requirements of paragraphs (b)(1) (i) and (ii) of this section. In this instance only the issuance responsibilities of the sub-unit need be reviewed. If an issuance unit with combined responsibilities is selected from a sample frame other than the issuance frame, and is not listed in the issuance frame because it was reviewed during a prior review (paragraphs (b)(1) (i) and (ii) of this section), the State may omit the review of that sub-unit's issuance responsibilities.

(4) *Selection of additional sub-units.* Once the required sample for a given classification has been selected, additional sub-units may be selected for on-site review. However, no sub-unit may be dropped once selected for review, unless a Federal audit or investigation is to be conducted simultaneously With the ME review. In these instances, the sub-unit(s) shall be dropped and a replacement(s) randomly selected.

(5) *Selection of sub-units with special characteristics.* When a sub-unit has some special characteristics, (e.g., large nonassistance caseload, operation of itinerant issuance points, etc.) or is suspected of having a specific problem in its operation of the program, the sub-unit may be selected from its classification before the required random sample selection is initiated. When a sub-unit is selected based upon such considerations, it shall be eliminated from the frame from which it was selected and the required sample size for that frame shall be reduced by one. It is important to note that selection of sub-units on a nonrandom basis must be completed prior to selection of the required random samples. If the State elects to select sub-units on a nonrandom basis, no more than 25 percent of the sub-units selected from any classification shall be selected in this manner, unless the required sample size is three or less, in which case the State may select one sub-unit in this manner. For example, if the required sample size for issuance offices is four, three of these must be selected randomly.

(f) *Selection of sub-units in project areas with caseloads of less than 3,000 participating households.* States shall select at least one sub-unit from each classification specified in paragraph (a) of this section during the review of project areas with average caseloads of less than 3,000. The method used to select these sub-units shall be at each State's option. If the project area contains a sub-unit(s) which does not fall into one of the classifications of paragraph (a) of this section, but such a sub-unit(s) has the responsibility for operation of some aspect of the program that must be reviewed (as identified in § 275.8 of this part), at least one such sub-unit(s) shall also be selected for review. States are encouraged to select those sub-units which best represent the project area's operation.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 23638, Apr. 8, 1980; 45 FR 46784, July 11, 1980]

§ 275.8 Review coverage.

(a) *Program requirements.* State agencies shall review all areas of program operation specified in this section by examining project areas' compliance with the program requirements outlined below during each ME review. State agencies shall be responsible for reviewing each program requirement based upon the provisions specified in Parts 271, 272, 273 and 274 of this chapter and the FNS-approved Plan of Operation. If FNS approves a State's request for a waiver from a program requirement, any different policy approved by FNS would also be reviewed. When, in the course of a review, a project area is found to be out of compliance with a given program requirement, the State shall identify the specifics of the problem including: The extent of the deficiency, the cause of the deficiency, and, as applicable, the specific procedural requirements the project area is misapplying.

(b) *Certification Requirements.* The review of certification responsibilities shall encompass the following program areas.

(1) Administration, including the requirements that:

(i) The project area maintains records as necessary to ascertain whether the program is being conducted properly including the use of forms and operating guidelines;

(ii) The project area makes materials available for public inspection in accordance with required procedures;

(iii) The project area employ sufficient staff to certify and issue benefits accurately to eligible households, and process fair hearing requests within the required time limits;

(iv) The project area retain all program records for a period of 3 years from the month of origin;

(v) The project area implement regulatory changes within required time frames.

(2) Application processing, including the requirements that:

(i) Applications are mailed or otherwise provided on the day requested, and are accepted when submitted so long as they have a name, address, and signature.

(ii) All applicant households have face-to-face interviews in a certification site prior to initial or recertification unless a telephone interview or home visit is requested and warranted:

(iii) The project area ensures that all household members 18 or over, or who have non-excluded income, furnish or apply for social security numbers;

(iv) The project area assigns certification periods based on individual household circumstances;

(v) Information relating to households' eligibility and benefit levels is verified in accordance with required procedures;

(vi) The project area provide eligible households that complete the initial application process an opportunity to participate no later than 30 calendar days after the application is filed;

(vii) The project area not deny applications in which a delay over 30 days is the fault of the project area, but instead follow the required procedures;

(viii) Households in which all members apply for PA be allowed to jointly apply for food stamps at the same time;

(ix) Households found eligible be provided with benefits for the month of intitial application;

(x) The project area's application procedures identify households eligible for expedited procedures at the time the household requests assistance;

(xi) The project area determines household eligibility for expedited service in accordance with required procedures, including proper application of the "destitute household" category;

(xii) The project area either mails or provides for the pick-up of either coupons or an ATP to households eligible for expedited service by the close of business on the fifth calendar day following the date of application.

(xiii) The project area provide households which timely reapply with benefits within the required time limits:

(xiv) Application forms be readily accessible to potentially eligible households, groups or organizations involved in outreach or anyone else requesting the form;

(xv) The project area post signs in certification offices which explain the application processing requirements and the right to file on the day of initial contact;

(xvi) All authorized representative procedures are complied with regarding application processing.

(3) Work registration, including the requirements that:

(i) The project area ensure that all household members required to register for work do so at the time of application and once every 6 months thereafter;

(ii) The project area forward work registration forms to the appropriate State ES office; and

(iii) The project area take appropriate action on information received from the State ES office.

(4) Notification to households, including the requirements that:

(i) Project areas provide applicants with either a notice of eligibility, denial or pending status within 30 days after the date of initial application;

(ii) Notices provided to households be accurate and contain all required information;

(iii) The project area uniformly use either a notice of denial *or* pending status when verification is lacking;

(iv) The project area provide households with a notice of adverse action as required before any action is taken to reduce or terminate benefits within a certification period;

(v) ID cards be issued to each participating household only at the time of certification unless a replacement is necessary; and

(vi) The project area provide each participating household with a notice of expiration just prior to or at the beginning of the last month of the certification period.

(5) Action upon changes, including the requirements that:

(i) The project area not impose any reporting requirements on households other than those required;

(ii) Federal and State food stamp mass changes are publicized and made effective for all issuances in the required time limits;

(iii) Change report forms be provided to households at initial certification, recertification, and whenever a form is returned;

(iv) When possible, the project area effect food stamp changes in the same month as a mass PA change but effect the change not later than the month following the month of the PA change;

(v) When households' PA benefits are terminated, the project area not terminate food stamp benefits, but follow the required procedures for adjusting households' food stamp benefits;

(vi) When possible, States handle mass adjustments to GA, SSI, and Social Security payments as mass changes and recompute food stamp benefits to be effective in the same month as the mass adjustment;

(vii) When cost-of-living increases in SSI or Social Security benefits are not handled as a mass change, the project area takes action to reflect these increases in food stamp benefit computations within four months after the cost-of-living increases take effect; and

(viii) The project area accurately transmit the notice of change or HIR card to the data management unit in time to meet processing requirements including requirements for decreases in household income of $50 a month or addition of a new household member, and that the notices of change be accurate and contain all required information.

(6) Restoration of lost benefits, including the requirements that:

(i) The project area restore benefits to households as required, but not for losses incurred more than 12 months from the date the State becomes aware of the loss;

(ii) The project area notify households of their entitlement to restoration and other required information;

(iii) The project area follow the required procedures in determining the amount to be restored; and

(iv) The project area maintain an accounting system for documenting a household's entitlement and current balance for restored benefits.

(7) Claims against households, including the requirements that:

(i) The project area establish a claim against any household that has received more food stamp benefits than it was entitled to receive following the required procedures;

(ii) The project area initiate collection action by sending demand letters which contain all required information;

(iii) The project area offsets claims against lost benefits;

(iv) The project area follow State and FNS procedures for suspension and termination of claims; and

(v) The project area maintain an accounting system for monitoring claims against households which meets the required criteria.

(8) Fraud disqualification, including the requirements that:

(i) The project area initiate administrative fraud hearings when required and notify households in writing at least 30 days prior to the hearing;

(ii) Within 90 days of the notification date the hearing be conducted, a decision reached and action taken;

(iii) Individuals be disqualified for 3 months when found guilty of fraud in an administrative fraud hearing; and

(iv) Fraud claims that are not repaid in cash are recouped from allotments in accordance with required procedures.

(9) Fair hearings, including the requirements that:

(i) Fair hearings be provided to any household aggrieved by any action of the State agency which occurred in the prior 90 days or any action during the certification period which affects the household's current benefits;

(ii) Within 45 days of receipt of a request for a local level fair hearing, the hearing be conducted, the decision reached and action taken to notify the household and local office in writing of the decision, the reason for the decision, the available appeal rights, and the effects of the decision on the household's benefits;

(iii) Advance written notice, containing all required information, be provided to all parties at least 10 days prior to the hearing; and

(iv) A household who has requested a fair hearing within the period provided by the notice of adverse action and has not specifically waived continuation of benefits, continue to participate on the basis authorized prior to the notice of adverse action;

(v) The project area reflect fair hearing decisions in households' benefit within the required time limits.

(10) Sixty-day continuation of benefits, including the requirements that:

(i) The project area provide continuation of certification for any household which moves from one project area to another (and meets the required criteria) for 2 months;

(ii) The projects areas involved in the household's move prepare, accept, and act upon the Form FNS-286 following required procedures; and

(iii) Single project area States provide for the continuous service to certified households which move from one political subdivision to another in the State and meet the required criteria.

(c) *Issuance requirements.* The review of issuance responsibilities shall encompass the following program areas:

(1) Monitoring of coupon issuers, including the requirement for an on-site review of each coupon issuer and bulk storage point at least once every three years.

(2) HIR masterfile, including the requirements that:

(i) The masterfile include records for all certified households;

(ii) The masterfile be divided into active and inactive HIR's;

(iii) The masterfile contain all required information for each household;

(iv) The masterfile be updated as required upon receipt of a notice of change and controls be established for expired certifications;

(v) Before establishing a HIR, the masterfile be checked to ensure that the household is not currently participating or disqualified; and

(vi) When an ATP is issued under expedited service procedures the masterfile be checked and corrective action taken as necessary.

(3) Coupon issuers, including the requirements that:

(i) Coupon issuers check each person's ID (and ATP if applicable) and perform signature comparison before coupon issuance;

(ii) The coupon issuer reconcile its issuance on a daily basis; and

(iii) The physical inventory of each coupon issuer agree with its perpetual inventory records and monthly reports.

(4) General issuance system requirements including those that:

(i) Replacement allotments be provided as required following the prescribed procedure;

(ii) The project area have a system which allows issuance of coupons to emergency representatives following the prescribed procedures;

(iii) The project area provide households certified on an expedited basis an opportunity to obtain coupons within the prescribed time limits;

(iv) The project area take the required actions to maintain control over manually prepared ATP's;

(v) In an HIR system, staggered issuance be completed by the 15th of the month; and

(vi) Participants certified after the 25th of a month be allowed at least 20 calendar days to obtain their coupons.

(5) ATP issuance, including the requirements that:

(i) ATP's contain all required information;

(ii) ATP's be valid only for the month of issuance except when issued after the 25th day of the month;

(iii) ATP's be mailed following required procedures;

(iv) Replacement ATP's be provided as required following established procedures;

(v) Project areas which stagger issuance of ATP's complete issuance by the 15th day of the month; and

(vi) Project areas maintain a control log for ATP's returned as undelivered which contains the required information.

(6) Mail issuance, including the requirements that:

(i) The project area maintain a mail issuance log which contains the required information;

(ii) At least two persons be involved in the mailing operation;

(iii) Controls be established to prevent participation through both mail and over-the-counter issuance;

(iv) The project area stagger issuance through the 10th day of the month using first class mail; and

(v) When coupons are lost in the mail, the project area take the required action.

(d) *Distribution of coupons.* The review of coupon management shall encompass the requirements that:

(1) The project area establish a coupon inventory management system which ensures that coupons are requisitioned and inventories maintained following established procedures;

(2) Coupon issuers and bulk storage points comply with established procedures when shipping or receiving coupons; and

(3) Coupon issuers and bulk storage points cancel improperly manufactured or mutilated coupons and follow State and FNS procedures for disposition of such coupons;

(4) Coupon issuers cancel unused coupons and follow State procedures for disposition of such coupons.

(e) *Reporting/recordkeeping.* The review of reporting and recordkeeping responsibilities shall include the requirements that:

(1) All mail issuance activity be reported on the Form FNS-250, Food Coupon Accountability Report, following required procedures;

(2) The project area correctly prepare Form FNS-259, Quarterly Food Stamp Mail Issuance Report;

(3) Coupon issuers and bulk storage points correctly prepare Form FNS-250 reports monthly;

(4) Coupon issuers and bulk storage points correctly prepare Forms FNS-261, Advices of Shipment, and FNS-300, Advices of Transfer, as necessary;

(5) The project area maintain issuance records for a period of 3-years from the month of origin;

(6) The project area obtain data on households by racial/ethnic classification; and

(7) The project area correctly prepare Form FNS-256, Monthly Report of Participation and Issuance.

(f) *Reconciliation.* The review of reconciliation shall encompass the following areas:

(1) ATP system reconciliation, including the requirements that:

(i) The project area verify the number of transacted ATP's and the total value of coupon issuances on a monthly basis following the established procedures for ATP's not reconciled;

(ii) The project area post and reconcile all transacted ATP's against the HIR masterfile following required procedures;

(iii) The project area identify all ATP's which do not reconcile as required.

(2) HIR system reconciliation, including the requirements that:

(i) The project area select and compare 20 percent of both open and closed HIR's to the casefiles on a semiannual basis; and

(ii) If the casefile cannot be located for a selected HIR card, a total review of all HIR's and casefiles be conducted.

(g) *Security/control.* The review of security and control shall include the requirements that:

(1) The project area provide security for and control all issuance documents which establish household eligibility while the documents are being stored, transferred or processed;

(2) The project area provide secure storage and limit access to blank ID cards and Notices of Change;

(3) The project area establish control and security procedures to safeguard coupons;

(4) The project area provide secure storage and reasonable protection for all coupons during transit;

(5) The project area promptly report to FNS any loss, theft or embezzlement of coupons; and

(6) The project area divide the responsibility for eligibility determinations and issuance among certification, data management, and issuance units.

(h) *Complaint procedures.* [Reserved]

(i) *Points and hours.* The review of project areas' compliance with the points and hours standards established by § 272.5 of this chapter shall include the requirements that:

(1) A needs assessment is conducted in each county, or incorporated city, which takes the required factors into account;

(2) A service plan is developed for each county, or incorporated city, following the required procedures, including the solicitation and use of public comments and the application of the minimum service standards;

(3) Service plans are correctly implemented including the continued applicability of approved exceptions or alternative levels of service; and

(4) The certification and issuance sites which are selected for review adequately meet service needs.

(j) *Outreach.* The review of outreach activities shall include the requirements that:

(1) The project area actively attempt to enlist local volunteers, including individuals, groups, agencies and organizations to assist in the outreach effort and ensure that they receive the necessary training;

(2) The project area establish and use media contacts on a regular basis to provide current information on the program;

(3) Printed materials provided by the State are distributed as required;

(4) The project area identify barriers to participation and assist in formulating corrective actions;

(5) The project area coordinate outreach activities with other groups, agencies or organizations performing food stamp outreach in the project area, including Community Food and Nutrition Program Grantees;

(6) The project area operate the referral system and attempt to extend it to all relevant agencies and organizations in accordance with § 277.6(b)(2)(i) of this chapter, including but not limited to all local PA and GA offices;

(7) The project area refer appropriate participants to WIC or CSFP programs operating in the area, and to the SSI program;

(8) Outreach reports be developed correctly;

(9) Special outreach efforts be developed as required;

(10) The project area conduct any activities needed to comply with required special efforts to distribute outreach materials directly to recipients of unemployment compensation, and to recipients of other programs; and

(11) The project area adhere to any provisions of the State's Outreach Plan which requires activity at the local level.

(k) *Personnel requirements.* The review of personnel requirements shall include the requirements that:

(1) Appropriate bilingual staff or interpreters and materials be provided in those project areas requiring bilingual services;

(2) A continuing training program be instituted for all applicable food stamp personnel;

(3) Only merit personnel be used in the certification process;

(4) Only authorized personnel be permitted access to issuance documents and coupons;

(5) The fair or fraud hearing official meet one of the required criteria;

(6) A local outreach coordinator, with sufficient clerical staff, is employed who expends sufficient time to accomplish the activities specified in the outreach plan.

(l) *State administration.* When an area of program operation or a program requirement is performed at the State level and the project area has no responsibility for direct administration of that area or requirement, it will be reviewed by FNS and need not be included in ME reviews. An example of this is when the HIR master file is maintained at the State level, and the project areas have no responsibility for direct administration of the requirements associated with the master file. In this and similar situations the program area cannot be reviewed during ME reviews and will be reviewed by FNS as identified in § 275.3(d).

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 160, 45 FR 15900, Mar. 11, 1980, as amended by Amdt. 233, 47 FR 53831, Nov. 30, 1982; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements associated with the program area specified in § 275.8 of this part in accordance with the procedures outlined in this section. As each project area's operational structure will differ, States shall review each program requirement applicable to the project area in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME Review. This review plan shall specify whether the project area is large, medium or small and shall contain:

(i) Identification of the project area to be reviewed and the dates the review will be conducted including the beginning and ending dates of the review periods for casefiles and program records;

(ii) Information secured from the project area regarding its caseload and organization including:

(A) Identification of each sub-unit, by classification, within the project area including identification of those with combined responsibilities and those with itinerant service points;

(B) Identification of where casefiles or individual program records are physically maintained within the project area and the controls used to organize them, i.e., logs, lists of actions, etc.;

(C) The project area's average active monthly caseload over the review period and, for all records maintained in systems of records other than casefiles (which will not be selected and reviewed based upon the casefile sample), the number generated during the review period in the project area;

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the technique used to select them;

(iv) Identification of any sub-unit(s) selected on other than a random basis as identified in § 275.7(e)(5) of this part and the reason for its nonrandom selection;

(v) Identification of whether the State is using the ME review to monitor coupon issuers and bulk storage points as discussed in § 275.7(b) of this part;

(vi) Identification of whether the State agency plans to select casefiles only from those sub-units selected for review or on a project area-wide basis as described in paragraph (d) of this section, and a description of the sample frame(s) from which the sample(s) is selected, including:

(A) Whether separate frames or lists must be combined;

(B) The type(s) of records contained in the frame;

(C) How many sample units (individual records or casefiles) are in the sample frame(s).

(D) Whether program records maintained outside of the casefile system will be selected based upon the casefile sample or whether an independent sample will be selected; and

(E) Any other information that will simplify and ensure that the selection process is random.

(2) In instances where the actual number of casefiles or program records is unknown, State agencies shall estimate using the best information available. When estimating, the State shall consider all available data sources and use the most accurate.

(3) ME review plans shall be maintained in an orderly fashion and be made available to FNS upon request.

(c) *Review methods.* (1) State agencies shall determine the optimal method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine if the project area is in compliance with all program requirements.

(2) State agencies shall use selection of casefiles and examination of program records contained therein, as described in paragraphs (d), (e) and (f) of this section, to review all program requirements that lend themselves to such an approach. For example, several processing and notice requirements (see § 275.8(b) of this part) lend themselves to review through examining a sample of casefiles and shall be reviewed in this manner. For requirements which do not lend themselves to this approach or where another approach may augment the results of record examination, State agencies may use any of the following review methods to measure project area and/or sub-unit compliance with program requirements, provided that the method used ensures complete coverage of the program requirement it is applied to:

(i) On-site observation of project area procedures;

(ii) Discussion of procedures with appropriate project area officials and workers, local food stamp advocacy or outreach groups, or food stamp households;

(iii) Reconstruction of an actual process and comparison of findings with the project area's; and

(iv) Step-by-step walk through of a certain procedure with appropriate workers or officials.

(3) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

(4) State agencies may go beyond the review methods listed above to examine project areas' compliance with program areas where specific problems are known to exist or where special emphasis is desired. States may select additional or larger samples of casefiles or use another method of review which goes into greater depth and results in more conclusive information.

(d) *Selection of casefiles in project areas with caseloads of 3,000 or more participating households.* (1) A casefile is a collection of program records used to establish the food stamp eligibility status of a household. Program records which are commonly maintained in casefiles include but are not limited to: Applications; application worksheets; Notices of Adverse Action; Notices of Expiration; Notices of Eligibility, Denial, and Pending Status; work registration forms; transfer of household benefit forms; and Notices of Change. While all of the above listed forms may not be maintained in casefiles, all that are so maintained shall be subject to examination through selection of a sample of casefiles.

(2) *ME casefile universe.* The universe for the ME selection of casefiles consists of all active casefiles maintained in the project area at the end of the 6-month review period, all inactive casefiles which were denied or terminated during the review period and all casefiles for households whose application is pending at the end of the review period. All casefiles excluded from this universe shall not be subject to review during the ME review. The 6-month review period may be the 6 months prior to the month of review or the 6 months prior to the month preceding the month of review. This is a State option intended to allow flexibility in the construction of sample frames.

(3) *ME sample frames for casefiles.* (i) States shall have the option of using any sample frame in the selection of casefiles for review; provided that the frame used includes either: all casefiles subject to review in the project area or all casefiles subject to review in those sub-units selected for review which maintain casefiles (see § 275.7 of this part). In either case, each casefile subject to selection and review shall have a known non-zero probability of being selected.

(ii) Whether the State elects to use a frame consisting of all casefiles in the project area or only those maintained in sub-units selected for review, the State shall ensure that all casefiles that fall within the definition are included and that, whenever possible, casefiles not subject to review are eliminated from the frame prior to selection.

(iii) If the State elects to sample only from those sub-units selected for review which maintain casefiles, the sample frame(s) shall consist of either: *A composite list of all casefiles subject* to review in those sub-units or separate lists of casefiles from each sub-unit selected for review.

(iv) The actual form of the ME casefile sample frame shall be at each State's option. Example of ME sample frames include: Lists of ATP's issued in the last month of the review period; lists of all households which are certified eligible at the end of the review period; the HIR masterfile; etc. Many of these lists would have to be supplemented with a list or lists reflecting actions taken to deny, terminate or hold a case pending for those cases not accounted for in the basic frame. It is possible that in combining lists of active and inactive casefiles some may be listed more than once, and would thus create problems in selection of the required sample size specified in paragraph (d)(4) of this section and bias the sample. In addressing this problem, States must eliminate duplicative listing of casefiles prior to sample selection.

(v) For each of the frames mentioned above, some casefile system is necessary that allows retrieval of individual casefiles by name, number or any other identifying character for proper sample selection. If the project area's organization prohibits this, the State could use the physical organization of the project area's casefiles as a sample frame. While this method has certain advantages (e.g., avoids the problem of casefiles being listed more than once), it should be avoided, as accurate frame construction and maintaining control of the selection process will be difficult.

(vi) States also have the option of using the quality control sample for selection of casefiles; provided that the quality control sampling and review process is not affected, and all necessary adjustments, additions, etc. are made to ensure compliance with the requirements of this section.

(4) *Casefile sample sizes.* The number of casefiles that must be selected during each ME review shall be based upon the project area's average caseload over the 6-month review period. Average caseload shall be the average of the total number of households certified eligible at the beginning of each of the months in the review period. Achievement of the required sample size shall be based upon the total number selected which meet the universe definition of paragraph (d)(2) of this section. For example, if a State is required to select 500 casefiles and does so, the required sample has been achieved if 50 of the casefiles selected have required no action during the review period. However, States shall, on the ME review worksheet outlined in paragraph (g) of this section, identify the proportion of casefiles selected which are not subject to review. The following table establishes the minimum number of casefiles State agencies shall select during each ME review of project areas with caseloads of 3,000 or more participating households. The maximum required sample size for any project area is 600.

Average 6-mo. caseload for the project area (N)	Required casefile sample size
≥ 75,000	600
3,000 to 74,999	[1] 100 + .007 (N − 3,000)

[1] Where N is the project areas average participating caseload.

(5) *Selection of individual program records.* (i) When one or more of the program records identified in paragraph (d)(1) of this section is maintained independently of the project area's casefile system, the State shall either select and review an independent sample of those records, or select and examine those records corresponding to the casefile sample which must be selected as outlined in paragraphs (d) (2), (3) and (4) of this section. If a State chooses the former option the requirements of the following paragraphs must be adhered to. In addition, when program records related to fair hearings, restoration of lost benefits, claims against households, etc. are maintained independently of the project area's casefile system, a sample of those program records shall be selected independently of the casefile sample.

(ii) The universes for program records maintained outside of the project area's casefile system shall include those generated or acted upon in the 6-month review period except that the universe for ATP's shall be those generated in the last month of the review period.

(iii) The sample frame for individual program records shall consist of either: All program records subject to review in the project area or those maintained in the sub-units selected for review. Any program records which are not in the above universe shall not be subject to review.

(iv) Sample sizes for program records shall be based upon the total number in the project area of each type which are subject to review. The following table establishes the required sample size for program records maintained outside of the project area's casefile system.

Total number of program records	Required sample size
>500	100
100-500	20%
<100	State option

(v) For project areas with less than 100 of a given type of individual program record, the State shall select and examine a representative number, but the specific number shall be at the State's option.

(vi) Since States may use samples of HIR's or ATP's to select casefile samples, the HIR's or ATP's so selected may be reviewed and would satisfy the sample requirements for those program records.

(6) *Sample selection.* (i) State agencies shall select casefiles or individual records in accordance with accepted sampling methodology. The actual technique used to select samples will be at the option of the State agency, provided that the technique yields a random and unbiased sample. Systematic sampling is recommended as it is relatively easy to administer and control in terms of cost and time.

(ii) States that choose to select samples only from those sub-units selected for review shall do so proportionally. From all sub-units selected for review that contain casefiles or individual program records, a proportion of the required sample for that record (see paragraph (d)(5) of this section) or casefiles must be selected. This proportional sampling can be achieved either by selecting from a composite list of all casefiles subject to review in those sub-units selected for review, or if the State elects to sample from each sub-unit independently, by making the following computations:

(A) Calculate the total number of casefiles or program records maintained in each of the sub-units selected for review;

(B) Find the percentage the number of casefiles or program records maintained in each sub-unit represents of the total number identified in paragraph (d)(6)(ii)(A) of this section; and

(C) Multiply the required sample size for the casefile or program records by each of the sub-units' percentages from paragraph (d)(6)(ii)(B) of this section.

(iii) States which choose to select samples on a project area-wide basis shall adhere to the provisions of § 275.7 of this part and may not eliminate casefiles once selected in the sample simply because of travel or similar considerations.

(e) *Selection of casefiles in project area's with caseloads of less than 3,000 participating households.* (1) During the review of project areas with average caseloads of less than 3,000, the State shall select a representative number of casefiles and/or program records to measure the project area's compliance with the program requirements associated with such records. States shall select and examine the program records mentioned in paragraphs (d)(1) and (d)(5)(i) and (vi) of this section.

(2) It is recommended that the program records selected be as representative of the project area's operation as possible. While random selection is not required in small project areas, it is recommended when possible. States which wish to select a random sample may follow the requirements of paragraph (d) of this section.

(3) In developing review plans for small project areas, States may disregard the requirements of § 275.9(b)(1)(ii)(C), (iv) and (vi) of this part.

(f) *Examination of casefiles/program records.* State agencies shall examine all casefiles which are subject to review to determine the correctness of actions taken by the project area based upon the program requirements for a given action. All of the program requirements specified in § 275.8 of this part, which can be reviewed through examination of casefiles and program records, shall be so reviewed. States shall examine the content of each casefile to determine whether all actions required to have been taken were, if the actions taken should have been, and whether the actions taken followed required policies and procedures. All actions taken (including any that should have been taken but were not) in the review period for a case selected for review, relating to program requirements that must be reviewed, shall be examined and the results of such examination(s) shall be recorded on the ME review worksheet.

(g) *Review worksheet.* (1) State agencies shall use a review worksheet to be approved by FNS, to record all review findings. For each sub-unit reviewed the State agency shall, on the worksheet, identify:

(i) The sub-unit being reviewed;

(ii) Each program requirement reviewed in the sub-unit;

(iii) The method used to review each program requirement;

(iv) A description of any deficiency detected;

(v) The cause(s) of any deficiency detected, if known;

(vi) The number of casefiles and/or program records selected and examined within the sub-unit, identification of those selected (record case number, household name, etc.), the proportion which were not subject to review, as well as the method used to select the sample;

(vii) Where applicable, the numerical extent of any deficiency detected through examination of program records; and

(viii) Any pertinent comments concerning the sub-unit's operation.

(2) State agencies shall promptly forward review findings to the appropriate State office for analysis, evaluation, and corrective action planning. Review worksheets shall be retained in an orderly fashion and made available to FNS upon request.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 25375, Apr. 15, 1980]

Subpart C—Quality Control (QC) Reviews

§ 275.10 Scope and purpose.

(a) As part of the Performance Reporting System, each State ag[illegible]cy is responsible for conducting quality control reviews. For food stamp quality control reviews, a sample of households shall be selected from two different categories: Households which are participating in the Food Stamp Program (called active cases) and households for which participation was denied or terminated (called negative cases). Reviews shall be conducted on active cases to determine if households are eligible and receiving the correct allotment of food stamps. Reviews of negative cases shall be conducted to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS and the State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors, which will determine the State agency's liability for payment errors and eligibility for enhanced funding in accordance with the Food Stamp Act of 1977, as amended, and to plan corrective action to reduce excessive levels of errors for any State agency with combined payment error and underissuance error rates of 5 percent or more.

(b) The objectives of quality control reviews are to provide:

(1) A systematic method of measuring the validity of the food stamp caseload;

(2) A basis for determining error rates;

(3) A timely continuous flow of information on which to base corrective

action at all levels of administration; and

(4) A basis for establishing State agency liability for errors that exceed the National standard and State agency eligibility for enhanced funding.

(c) The review process is the activity necessary to complete reviews and document findings of all cases selected in the sample for quality control reviews. The review process shall consist of: (1) Case assignment and completion monitoring; (2) case reviews; (3) supervisory review of completed worksheets and schedules; and (4) transmission of completed worksheets and schedules to the State agency for centralized data compilation and analysis.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 149, 44 FR 45893, Aug. 3, 1979, as amended by Amdt. 260, 49 FR 6304, Feb. 17, 1984]

§ 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan which demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. The description of the sample frames shall include: source, availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, overpull, computation of sampling intervals and random starts (if any), stratification or clustering (if any), identifying sample cases, correcting over-or under-sampling, and monitoring sample selection and assignment. A time schedule for each step in the sampling procedures shall be included. If appropriate, the sampling plan shall include a description of its relationship, to other Federally-mandated quality control samples (e.g., Aid to Families with Dependent Children or Medicaid).

(2) *Criteria.* All sampling plans shall:

(i) Conform to principles of probability sampling;

(ii) Document methods for estimating characteristics of the population and their sampling errors;

(iii) Contain population estimates with the same or better precision as would be obtained by a simple random sample of the size specified in paragraphs (b)(1) and (b)(2) of this section;

(iv) Describe all weighting procedures and their effects on data analysis and reporting requirements;

(v) Provide for the maintenance of the current effort in other phases of the quality control process (e.g., case reviews, statistical reports, and data analysis);

(vi) Specify and explain the basis for the sample sizes chosen by the State agency;

(vii) Specify and explain the basis for the approximate number of sample cases to be selected each month if other than one-twelfth of the active and negative sample sizes; and

(viii) If the State agency has chosen an active sample size as specified in paragraph (b)(1)(iii) of this section, include a statement that, whether or not the sample size is increased to reflect an increase in participation as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FNS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation.

(4) *FNS review and approval.* The State agency shall submit its sampling plan to FNS for approval as a part of its State Plan of Operation in accordance with § 272.2(e)(4). In addition, all sampling procedures used by the State agency, including frame composition, construction, and content shall be

fully documented and available for review by FNS.

(b) *Sample size.* There are two samples for the food stamp quality control review process, an active case sample and a negative case sample. The size of both these samples is based on the State agency's average monthly caseload during the annual review period. Costs associated with a State agency's sample sizes are reimbursable as specified in § 277.4.

(1) *Active cases.* (i) All active cases shall be selected in accordance with standard procedures, and the review findings shall be included in the calculation of the State agency's payment error and underissuance error rates.

(ii) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(1)(iii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(viii) of this section, the minimum number of active cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly active households	Required annual sample size
60,000 and over	n=2400.
10,000 to 59,000	n=300+0.042(N-10,000).
Under 10,000	n=300.

(iii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(viii) of this section may determine the minimum number of active cases to be selected and reviewed during each annual review period as follows:

Average monthly active households	Required annual sample size
60,000 and over	n=1200.
10,000 to 59,999	n=300+0.018 (N-10,000).
Under 10,000	n=300.

(iv) In the formulas in paragraphs (b)(1)(ii) and (iii) of this section n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected each review period. Also in the formulas, N is the anticipated average monthly participating caseload subject to quality control review (i.e., households which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(2) *Negative cases.* The minimum number of negative cases to be selected and reviewed during each annual review period shall be determined as follows:

Average monthly negative households	Required annual sample size
5,000 and over	n=800.
500 to 4,999	n=150+0.144 (N-500).
Under 500	n=150.

(i) In the above formula, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(ii) In the above formula, N is the anticipated average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, State agencies will not be penalized if the actual caseload during a review period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(4) *Alternative designs.* The active and negative sample size determinations assume that State agencies will use a systematic or simple random sample design. State agencies able to obtain results of equivalent reliability with smaller samples and appropriate design may use an alternative design with FNS approval. To receive FNS

approval, proposals for alternative designs must provide population estimates with equivalent or better precision than would be obtained had the State agency reviewed simple random samples of the sizes specified by paragraphs (b)(1) and (b)(2) of this section.

(c) *Sample selection.* The selection of cases for quality control review shall be made separately for active and negative cases each month during the annual review period. Each month each State agency shall select for review approximately one-twelfth of its required sample, unless FNS has approved other numbers of cases specified in the sampling plan.

(1) *Substitutions.* Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a household is selected more than once for the negative sample as the result of separate and distinct instances of denial or termination, it shall be reviewed each time.

(2) *Corrections.* Excessive undersampling must be corrected during the annual review period. Excessive oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. Because corrections must not bias the sample results, cases which are dropped to compensate for oversampling must comprise a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for undersampling must be randomly selected from the entire frame in accordance with the procedures specified in paragraphs (b), (c)(1), and (e) of this section. All sample adjustments must be fully documented and available for review by FNS.

(d) *Required sample size.* A State agency's required sample size is the larger of either the number of cases selected which are subject to review or the number of cases chosen for selection and review according to paragraph (b) of this section.

(e) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. Complete coverage of the sample universes, as defined in paragraph (f) of this section, must be assured so that every household subject to quality control review has an equal or known chance of being selected in the sample. Since the food stamp quality control review process requires an active and negative sample, two corresponding sample frames are also required.

(1) *Active cases.* The frame for active cases shall list all households which were: (i) certified prior to, or during, the sample month; and (ii) issued benefits for the sample month, except for those households excluded from the universe in paragraph (f)(1) of this section. State agencies may elect to use either a list of certified eligible households or a list of households issued an allotment. If the State agency uses a list of certified eligible households, those households which are issued benefits for the sample month after the frame has been compiled shall be included in a supplemental list. If the State agency uses an issuance list, the State agency shall ensure that the list includes those households which do not actually receive an allotment because the entire amount is recovered for repayment of an overissuance in accordance with the allotment reduction procedures in § 273.18.

(2) *Negative cases.* The frame for negative cases shall list all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section.

(3) *Unwanted cases.* A frame may include cases for which information is not desired (e.g., households which have been certified but did not actually participate during the sample month). When such cases cannot be eliminated from the frame beforehand and are selected for the sample, they must be accounted for and reported as

being not subject to review in accordance with the provisions in §§ 275.12(g) and 275.13(e).

(f) *Sample universe.* The State agency shall ensure that its active and negative case frames accurately reflect their sample universes. There are two sample universes for the food stamp quality control review process, an active case universe and a negative case universe. The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) *Active cases.* The universe for active cases shall include all households certified prior to, or during, the sample month and receiving food stamps for the sample month, except for the following:

(i) A household in which all the members had died or had moved out of the State before the review could be undertaken or completed;

(ii) A household receiving food stamps under a disaster certification authorized by FNS;

(iii) A household which is under investigation for intentional Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing; or

(v) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application. Other households excluded from the active case universe during the review process are identified in § 275.12(g).

(2) *Negative cases.* The universe for negative cases shall include all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except the following:

(i) A household which had its case closed due to expiration of the certification period;

(ii) A household which withdrew an application prior to the agency's determination;

(iii) A household which is under investigation for intentional Program violation. Other households excluded from the negative case universe during the review process are identified in § 275.13(e). The negative case universe shall not include negative actions taken against the household which do not result in the household actually being denied or terminated.

(g) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of an FNS-authorized demonstration project which FNS determines to significantly modify the rules for determining households' eligibility or allotment level, and households participating based upon an application processed by Social Security Administration personnel shall be included in the selection and review process. They shall be included in the universe for calculating sample sizes and included in the sample frames for sample selection as specified in paragraphs (b) through (e) of this section. In addition, they shall be included in the quality control review reports as specified in § 275.21(e) and included in the calculation of a State agency's completion rate as specified in § 275.25(e)(6). However, all results of reviews of active and negative demonstration project/SSA processed cases shall be excluded from the determination of State agencies' active and negative case error rates, payment error rates, and underissuance error rates as described in § 275.25(c). The review of these cases shall be conducted in accordance with the provisions specified in §§ 275.12(h) and 275.13(f).

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 260, 49 FR 6304, Feb. 17, 1984; 49 FR 14495, Apr. 12, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 275.12 Review of active cases.

(a) *General.* A sample of households which were certified prior to, or during the sample month and issued food stamp benefits for the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible and, if eligible, whether the household is receiving the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (i.e., basic program requirements, resources, income, and deductions). The elements of eligibility are specified in §§ 273.1 and 273.3 through 273.9. The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency as of the review date. When changes in household circumstances occur, the reviewer shall determine whether the changes were reported by the participant and handled by the agency in accordance with the rules set forth in §§ 273.12, 273.13 and 273.21, as appropriate. For active cases, the review date shall always fall within the sample month, either the first day of a calendar or fiscal month or the day of certification, whichever is later. The review of active cases shall include: a household case record review; a field investigation, except as provided in paragraph (b) of this section; the identification of any variances; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record to identify the specific facts relating to the household's eligibility and basis of issuance. If the reviewer is unable to locate the household case record, the reviewer shall identify as many of the pertinent facts as possible from the household issuance record. The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change and applies to the sample month. If during the case record review the reviewer can determine and verify the household's ineligibility the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Integrated Worksheet, Form FNS-380, and to tentatively plan the content of the field investigation.

(c) *Field investigation.* A full field investigation shall be conducted for all active cases selected in the sample month except as provided in paragraph (b) of this section. If during the field investigation the reviewer determines and verifies the household's ineligibility, the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. In Alaska an exception to this requirement can be made in those isolated areas not reachable by regularly scheduled commercial air service, automobile, or other public transportation provided one fully documented attempt to contact the household has been made. Such cases may be completed through casefile review and collateral contact. The field investigation will include interviews with the head of household, spouse, or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status. The reviewer shall utilize information obtained through the field investigation to complete column (3) of the Integrated Worksheet, Form FNS-380.

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to making a home visit, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control and that a home visit will be made in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. Most interviews will be held in the home; however, interviews can be held elsewhere when circumstances warrant. Under

no circumstances shall the interview with the household be conducted by phone, except in Alaska when an exception to the field investigation is made in accordance with this section. During the interview with the participant, the reviewer shall:

(i) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;

(ii) Establish the composition of the household;

(iii) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(iv) Elicit from the participant names of collateral contacts. The reviewer shall use, but not be limited to, these designated collateral contacts. If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal to cooperate (as contained in paragraph (g)(1)(ii) of this section), and continue the review to the fullest extent possible.

(2) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verification shall cover each element of eligibility as it affects the household's eligibility and coupon allotment. The reviewer shall make every effort to use the most reliable second party verification available (for example, banks, payroll listings, etc.), in accordance with FNS guidelines, and shall thoroughly document all verification obtained. If any information obtained by the QC reviewer differs from that given by the participant, then the reviewer shall resolve the differences to determine which information is correct before an error determination is made. The manner in which the conflicting information is resolved shall include recontacting the participant unless the participant cannot be reached. When resolving conflicting information reviewers shall use their best judgement based on the most reliable data available and shall document how the differences were resolved.

(d) *Variance identification.* The reviewer shall identify any element of a basic program requirement or the basis of issuance which varies (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). For each element that varies, the reviewer shall determine whether the variance was State agency or participant caused. The results of these determinations shall be coded and recorded in column (5) of the Integrated Worksheet, Form FNS-380.

(1) *Variances included in error analysis.* Except for those variances in an element resulting from one of the situations described in paragraph (d)(2) of this section, any variance involving an element of eligibility or basis of issuance shall be included in the error analysis. Such variances shall include but not be limited to those resulting from a State agency's failure to take the disqualification action related to SSN's specified in § 273.6(c), and related to work requirements, specified in § 273.7(g).

(2) *Variances excluded from error analysis.* The following variances shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month:

(i) Any variance resulting from the nonverified portion of a household's gross nonexempt income where there is conclusive documentation (a listing of what attempts were made to verify and why they were unsuccessful) that such income could not be verified at the time of certification because the source of income would not cooperate in providing verification and no other sources of verification were available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude any resulting variance from the error determination. This follows certification policy outlined in § 273.2(f)(1)(i).

(ii) Any variance in cases certified under expedited certification procedures resulting from postponed verification of an element of eligibility as allowed under § 273.2(i)(4)(i). Verification of gross income, deductions, resources, household composition, alien status, or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures contains a variance as a result of a residency deficiency, a mistake in the basis of issuance computation, a mistake in participant identification, or incorrect expedited income accounting, the variance shall be included in the error determination. This exclusion shall only apply to those cases which are selected for QC review in the first month of participation under expedited certification.

(iii) Any variance subsequent to certification in an element of eligibility or basis of issuance which was not reported and was not required to have been reported as of the review date. The elements participants are required to report and the time requirements for reporting are specified in §§ 273.12(a) and 273.21(h) and (i), as appropriate. If, however, a change in any element is reported, and the State agency fails to act in accordance with §§ 273.12(c) and 273.21(j), as appropriate, any resulting variance shall be included in the error determination.

(iv) Any variance in deductible expenses which was not provided for in determining a household's benefit level in accordance with § 273.2(f)(3)(i)(B). This provision allows households to have their benefit level determined without providing for a claimed expense when the expense is questionable and obtaining verification may delay certification. If such a household subsequently provides the needed verification for the claimed expense and the State agency does not redetermine the household's benefits in accordance with § 273.12(c), any resulting variance shall be included in the error determination.

(3) *Other findings.* Findings other than variances made during the review which are pertinent to the food stamp household or the case record may be acted on at the discretion of the State agency. Examples of such findings are: an incorrect age of a household member which is unrelated to an element of eligibility; an overdue subsequent certification; no current application on file; insufficient documentation; incorrect application of the verification requirements specified in Part 273; and deficiencies in work registration procedural requirements. Such deficiencies include: inadequate documentation of each household member's exempt status; work registration form for each nonexempt household member not completed at the time of application and every six months thereafter; and the household not advised of its responsibility to report any changes in the exempt status of any household member.

(e) *Error analysis.* The reviewer shall analyze all appropriate variances in completed cases, in accordance with paragraph (d) of this section, which are based upon verified information and determine whether such cases are either eligible, eligible with a basis of issuance error, or ineligible. The review of an active case determined ineligible shall be considered completed at the point of the ineligibility determination. For households determined eligible, the review shall be completed to the point where the correctness of the basis of issuance is determined, except in the situations outlined in paragraph (g) of this section. In the event that a review is conducted of a household which is receiving restored or retroactive benefits for the sample month, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. A food stamp case in which a household member(s) receives public assistance shall be reviewed in the same manner as all other food stamp cases, using income as received. The determination of a household's eligibility and the correctness of the basis of issuance shall be determined based on data entered on the computation sheet as well as other information documented on other portions of the Integrated Worksheet, Form FNS-380, as appropriate.

(f) *Reporting of review findings.* All information verified to be incorrect during the review of an active case shall be reported to the State agency for appropriate action on an individual case basis. This includes information on all variances in elements of eligibility and basis of issuance in both error and nonerror cases. In addition, the reviewer shall report the review findings on the Integrated Review Schedule, Form FNS-380-1, in accordance with the following procedures:

(1) *Eligibility errors.* If the reviewer determines that a case is ineligible, the occurrence and the total allotment issued in the sample month shall be coded and reported. Whenever a case contains a variance in an element which results in an ineligibility determination and there are also variances in elements which would cause a basis of issuance error, the case shall be treated as an eligibility error. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(2) *Basis of issuance errors.* If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding $5.00, the occurrence and the amount of the error shall be coded and reported. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(g) *Disposition of case reviews.* Each case selected in the sample of active cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Integrated Review Schedule, Form FNS-380-1.

(1) *Cases reported as not complete.* Active cases shall be reported as not completed if the household case record cannot be located and the household itself is not subsequently located; if the household case record is located but the household cannot be located unless the reviewer attempts to locate the household as specified in this paragraph; or if the household refuses to cooperate, as discussed in this paragraph. All cases reported as not complete shall be reported to the State agency for appropriate action on an individual case basis. Without FNS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2).

(i) If the reviewer is unable to locate the participant either at the address indicated in the case record or in the issuance record and the State agency is not otherwise aware of the participant's current address, the reviewer shall attempt to locate the household by contacting at least two sources which the State agency determines are most likely to be able to inform the reviewer of the household's current address. Such sources include but are not limited to:

(A) The local office of the U.S. Postal Service;

(B) The State Motor Vehicle Department;

(C) The owner or property manager of the residence at the address in the case record; and

(D) Any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers, or relatives. Once the reviewer has attempted to locate the household and has documented the response of each source contacted, if the household still cannot be located and the State agency has documented evidence that the household did actually exist, the State agency shall report the active case as not subject to review. In these situations documented evidence shall be considered adequate if it either documents two different elements of eligibility or basis of issuance, such as a copy of a birth certificate for age and pay status for income; or documents the statement of a collateral contact indicating that the household did exist. FNS Regional Offices will monitor the results of the contacts which State agencies make in attempting to locate households.

(ii) If a household refuses to cooperate with the quality control reviewer and the State agency has taken other administrative steps to obtain that cooperation without obtaining it, the household shall be notified of the penalities for refusing to cooperate with respect to termination and reapplication, and of the possibility that its case will be referred for investigation for willful misrepresentation. If a household refuses to cooperate after such notice, the reviewer may attempt to complete the case and shall report the household's refusal to the State agency for termination of its participation without regard for the outcome of that attempt. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Instances where the household's unwillingness to cooperate in completing a quality control review has the effect of a refusal to cooperate shall include the following:

(A) The household does not respond to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt;

(B) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 days of the date of the scheduled interview to reschedule the interview; or

(C) The household does not return a signed release of information statement to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, in these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

(2) *Cases not subject to review.* Cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated during the review process. These cases shall be as follows:

(i) Death of all members of a household if they died before the review could be undertaken or completed;

(ii) The household moved out of State before the review could be undertaken or completed;

(iii) The household, at the time of the review, is under active investigation for intentional Food Stamp Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application for the sample month;

(v) A household dropped as a result of correction for oversampling;

(vi) A household participating under disaster certification authorized by FNS for a natural disaster;

(vii) A case incorrectly listed in the active frame;

(viii) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing;

(ix) A household that did not receive benefits for the sample month; or

(x) A household that still cannot be located after the reviewer has attempted to locate it in accordance with paragraph (g)(1)(i), of this section.

(h) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of a demonstration project which establishes new FNS-authorized eligibility criteria or modifies the rules for determining households' eligibility or allotment level shall be reviewed following standard procedures provided that FNS does not modify these procedures to reflect modifications in the treatment of elements of eligibility or basis of issuance in the case of a demonstration project. If FNS determines that information obtained from these cases would not be useful, then they may be excluded from review. A household whose most recent application for participation was processed by Social Security Administration personnel shall be reviewed following standard procedures. This includes applications for recertification, provided such an application is processed by the SSA as allowed in § 273.2(k)(2)(ii).

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 260, 49 FR 6306, Feb. 17, 1984; 49 FR 14495, Apr. 12, 1984]

§ 275.13 Review of negative cases.

(a) *General.* A sample of households denied certification to receive food stamps or which had their participation in the Food Stamp Program terminated during a certification period effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial or termination is correct or whether the denial or termination is correct for any other reason documented in the casefile. When the case record alone does not prove ineligibility, the reviewer may attempt to verify the element(s) of eligibility in question by telephoning either the household and/or a collateral contact(s). Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial or termination on the Negative Quality Control Review Schedule, Form FNS-245.

(c) *Error analysis.* A negative case shall be considered correct if the reviewer is able to verify through documentation in the household case record or collateral contact that a household was correctly denied or terminated from the program. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through such documentation or collateral contact, the negative case shall be considered incorrect.

(d) *Reporting of review findings.* When a negative case is incorrect, this information shall be reported to the State agency for appropriate action on an individual case basis, such as recomputation of the coupon allotment and restoration of lost benefits. In addition, the reviewer shall code and record the error determination on the Negative Quality Control Review Schedule, Form FNS-245.

(e) *Disposition of case review.* Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS-245.

(1) Negative cases shall be reported as not completed if the reviewer, after all reasonable efforts, is unable to locate the case record. In no event, however, shall any negative case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2), without prior FNS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) Negative cases shall be reported as not subject to review when the household, at the time of the review:

(i) Withdrew an application prior to the State agency's determination;

(ii) Is under active investigation for intentional Food Stamp Program violation;

(iii) Had its case closed due to expiration of the certification period; or

(iv) Was dropped as a result of correction for oversampling.

(f) *Demonstration projects/SSA processing.* A household whose application has been denied or whose participation has been terminated under the rules of an FNS-authorized demonstration project shall be reviewed following standard procedures unless FNS provides modified procedures to reflect the rules of the demonstration project. If FNS determines that information obtained from these cases would not be useful, then these cases may be excluded from review. A household whose application has been processed by SSA personnel and is subsequently denied participation shall be reviewed following standard procedures.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 260, 49 FR 6309, Feb. 17, 1984]

§ 275.14 Review processing.

(a) *General.* Each State agency shall use FNS handbooks, worksheets, and schedules in the quality control review process.

(b) *Handbooks.* The reviewer shall follow the procedures outlined in the Quality Control Review Handbook, FNS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases shall be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FNS Handbook 311.

(c) *Worksheets.* The Integrated Review Worksheet, Form FNS-380, shall be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FNS-380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

(d) *Schedules.* Decisions reached by the reviewer in active case reviews shall be coded and recorded on the Integrated Review Schedule, Form FNS-380-1. Such active case review findings must be substantiated by information recorded on the Integrated Review Worksheet, Form FNS-380. In negative case reviews, the review findings shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS-245, and supplemented as necessary with other documentation substantiating the findings.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984]

Subpart D—Data Analysis and Evaluation

§ 275.15 Data management.

(a) *Analysis.* (1) Analysis is the process of classifying data, such as by areas of program requirements or use of error-prone profiles, to provide a basis for studying the data and determining trends including significant characteristics and their relationships.

(2) *Error-prone profiles.* (i) An error-prone profile is the product of a statistical analysis of quality control data. Its objective is the identification of clusters of cases characterized by particular caseworker, socio-economic, or other household traits which have a high probability of agency or participant error. In its simplest form, a profile is a description of characteristics which are most strongly associated with errors. With this information, attention can be focused on areas where errors are most likely to occur.

(ii) Any State agency that prepares an error-prone profile and any State agency that is provided an error-prone profile by FNS shall use the profiles as part of the data analysis process to provide a basis for the formulation and evaluation of corrective action.

(3) Although quality control is designed to produce Statewide estimates of the frequency and cost of errors, it can also provide useful information about smaller areas within the State. In addition to the analysis of the Statewide quality control sample, States shall examine the quality control review findings from project areas with an average monthly participating caseload in excess of 35,000 households and incorporate the results in its corrective action planning. QC sam-

ples in project areas with caseloads of 35,000 or more are large enough to allow projection of findings with a reasonable degree of reliability. States may also examine QC data from smaller project areas.

(b) *Evaluation.* Evaluation is the process of determining the cause(s) of each deficiency, magnitude of the deficiency, and geographic extent of the deficiency, to provide the basis for planning and developing effective corrective action.

(c) Each State agency must analyze and evaluate at the State and project area levels all management information sources available to:

(1) Identify all deficiencies in program operations and systems;

(2) Identify causal factors and their relationships;

(3) Identify magnitude of each deficiency, where appropriate (This is the frequency of each deficiency occurring based on the number of program records reviewed and where applicable, the amount of loss either to the program or participants or potential participants in terms of dollars. The State agency shall include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable);

(4) Determine the geographic extent of each deficiency (e.g., Statewide/individual project area or management unit); and,

(5) Provide a basis for management decisions on planning, implementing, and evaluating corrective action.

(d) Management information sources which shall be used in the data analysis and evaluation process at the State agency and project area levels include but are not limited to: Quality control reviews; error-prone profiles; administrative cost reviews; management evaluation reviews including State agency monitoring of the effectiveness of corrective action efforts; FNS reviews and assessment of State operations; civil rights review summaries; audits; investigation summaries; corrective action plans; outreach plans and reports; information obtained from the State's complaint procedures; fair hearing findings; credits for lost benefits; fiscal claims against participants; participant prosecutions; court suits; work registration/job search reports; racial/ethnic data reports; coupon accountability reports; budget and expense reports; mail issuance replacement reports; comments from participants, advocacy groups, and other interested parties.

(e) In the evaluation of data, situations may arise where the State agency identifies the existence of a deficiency, but after reviewing all available management information sources sufficient information is not available to make a determination of the actual causal factor(s), magnitude, or geographic extent necessary for the development of appropriate corrective action. In these situations, the State agency shall be responsible for gathering additional data necessary to make these determinations. This action may include, but is not limited to, conducting additional full or partial ME reviews in one or more project areas/management units or discussions with appropriate officials.

(f) Deficiencies identified from all management information sources must be analyzed and evaluated together to determine their causes, magnitude, and geographic extent. Causes indicated and deficiencies identified must be examined to determine if they are attributable to a single cause and can be effectively eliminated by a single action. Deficiencies and causes identified must also be compared to the results of past corrective action efforts to determine if the new problems arise from the causal factors which contributed to the occurrence of previously identified deficiencies.

(g) Data analysis and evaluation must be an ongoing process to facilitate the development of effective and prompt corrective action. The process shall also identify when deficiencies have been eliminated through corrective action efforts, and shall provide for the reevaluation of deficiencies and causes when it is determined that corrective action has not been effective.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980]

Subpart E—Corrective Action

SOURCE: Amdt. 160, 45 FR 15909, Mar. 11, 1980, unless otherwise noted.

§ 275.16 Corrective action planning.

(a) Corrective action planning is the process by which State agencies, with FNS approval, shall determine appropriate actions to reduce substantially or eliminate deficiencies in program operations and provide responsive service to eligible households.

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. There are two kinds or corrective action: Remedial, by which past errors in individual cases are recertified through issuance of retroactive benefits, sending claim determinations, etc., and preventive, by which patterns of deficiencies are corrected in such a way that they do not recur. Most planning will involve the latter kind. In planning corrective action, the State agency shall determine if correction of the deficiency requires action by the State agency, the project/management unit, or the combined efforts of both. Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from State agency causal factors (e.g., inadequate or incorrect manuals, training materials, or operational guidelines; inadequate State staff; problems with Statewide computer system; problems with Statewide mail issuance system);

(2) Constitute a Statewide trend (States shall review all data sources at least semiannually to identify any patterns of deficiencies which might constitute a Statewide trend. When the State determines that during the period being reviewed a deficiency has been occurring in a significant number (usually 25 percent) of the State's total project areas/management units or of the local certification or issuance offices if the State has only one FNS designated project area, the State shall determine whether some action by the State is needed to correct the deficiency. If the deficiency meets both criteria, the State agency shall propose consolidated corrective action at the State level for incorporation into the State corrective action plan. Upon FNS approval, the deficiency shall remain in the State corrective action plan until such time as the consolidated corrective action has been completed and the deficiency has been eliminated.);

(3) Are the causes for a cumulative allotment error rate for States which do not receive enhanced funding as described in § 275.25(c)(2) for any reporting period (actions to correct errors in individual cases, however, shall not be submitted as part of the State plan);

(4) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases and rates of 3 percent or more of a specific type of administrative deficiency, except those identified in § 275.12(d)(2) (i), (ii), (iii), and (iv) of this part (Actions to correct errors in individual cases, however, shall not be submitted as part of the State plan.);

(5) Are identified by FNS reviews or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS);

(6) Are patterns of errors identified in large project areas/management units (Isolated occurrences of errors as determined by the State shall be excluded.); and

(7) Result from 5 percent or more of the State's QC sample being coded "not complete" as defined in § 275.12(g)(1) of this part due to an inability to locate casefiles and/or participants. This standard shall apply separately to both active and negative samples. Such corrective action shall be based on a thorough investigation to determine the cause of the deficiency.

(c) The State agency shall ensure that appropriate corrective action is taken on all deficiencies including each case found to be in error by quality control reviews and those deficiencies requiring corrective action only at the project area level. Moreover, when a substantial number of deficiencies are identified which require State agency level and/or project area/management unit corrective action, the State agency and/or project area/management unit shall establish an order of priority to ensure that the most serious deficiencies are addressed immediately and corrected as soon as possible. Primary factors to be considered when determining the most serious deficiencies are:

(1) Magnitude of the deficiency as defined in § 275.15(c)(3) of this part;

(2) Geographic extent of the deficiency (e.g., Statewide/project area or management unit);

(3) Anticipated results of corrective actions; and

(4) High probability of errors occurring as identified through all management evaluation sources.

(d) In planning corrective action, the State shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, training, and outreach activities to develop appropriate and effective corrective action measures.

(Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2027), as amended by Pub. L. 96-249, 94 Stat. 364-365, May 26, 1980)

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 169, 46 FR 7263, Jan. 23, 1981; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 275.17 State corrective action plan.

(a) State agencies shall prepare a corrective action plan addressing those deficiencies specified in § 275.16(b) of this part as requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. Any deficiencies detected through any source not previously reported to FNS which require incorporation into the State Corrective Action Plan shall be submitted to FNS within 60 days of identification. As deficiencies are reduced substantially or eliminated, the State agency shall notify FNS in writing. The State shall be responsible for documenting why each deficiency is being removed from the Plan. The removal of any deficiency from the Plan will be subject to FNS review and validation.

(b) *Content.* State corrective action plans shall contain, but not necessarily be limited to, the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate, as defined in § 275.15(c)(3) of this part;

(4) Geographic extent of the deficiency (e.g., Statewide/project area or management unit—specific project areas in which the deficiency occurs);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, and the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the State agency will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

§ 275.18 Project area/management unit corrective action plan.

(a) The State agency shall ensure that corrective action plans are prepared at the project area/management unit level, addressing those deficiencies not required to be included in the State corrective action plan. State agencies may elect to prepare these plans for or in cooperation with the project area. These project area/management unit corrective action plans shall be open-ended and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. Any deficiencies detected through any source not previously reported to the State agency which require incorporation into the Project Area/Management Unit Corrective Action Plan shall be submitted to the State agency within 60 days of identification. As deficiencies are reduced substantially or eliminated, the project area/management unit shall notify the State agency in writing. The project area/management unit shall be responsible for documenting why each deficiency is being removed from the Plan. The removal of any deficiency from the Plan will be subject to State agency and FNS review and validation.

(b) *Content.* Project area/management unit corrective action plans shall contain all the information necessary to enable the State agency to monitor and evaluate the corrective action properly. Also, State agencies shall establish requirements for project area/management units in planning, implementing and reporting corrective action to assist the State agency's efforts to fulfill its responsibilities for determining which deficiencies must be addressed in the State corrective action plan. States should consider requiring project area/management unit plans to include the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate, as defined in § 275.15(c)(3) of this part;

(4) Geographic extent of the deficiency (throughout the project area/management unit or only in specific offices);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the project area/management unit will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

§ 275.19 Monitoring and evaluation.

(a) The State agency shall establish a system for monitoring and evaluating corrective action at the State and project area levels. Monitoring and evaluation shall be an ongoing process to determine that deficiencies are being substantially reduced or eliminated in an efficient manner and that the program provides responsive service to eligible households.

(b) The State agency shall ensure that corrective action on all deficiencies identified in the State Corrective Action Plan and Project Area/Management Unit Corrective Action Plan is implemented and achieves the anticipated results within the specified time frames. The State agency shall monitor and evaluate corrective action at the State and project levels through a combination of reports, field reviews, and examination of current data available through program management tools and other sources.

(c) In instances where the State agency and/or the project area/management unit determines that the proposed corrective action is not effective in reducing substantially or eliminating deficiencies, the State agency and/or the project area/management unit shall promptly reevaluate the deficiency, causes, and the corrective action taken, and develop and implement new corrective actions.

Subpart F—Responsibilities for Reporting on Program Performance

SOURCE: Amdt. 160, 45 FR 15911, Mar. 11, 1980, unless otherwise noted.

§ 275.20 ME review reports.

(a) *Review schedules.* (1) Each State agency shall submit to the appropriate FNS Regional Office review schedules for performance of ME reviews, which shall reflect review activity beginning 90 days after publication of these regulations.

(2) States shall submit review schedules for each classification of project areas/management units as follows:

(i) Large, which shall cover 1 year of review activity;

(ii) Medium, which shall cover 2 years of review activity; and

(iii) Small, which shall cover 3 years of review activity.

(3) As identified in § 275.5(b)(1) of this part, under certain circumstances small project areas must be reviewed more often than once every three years. States shall include the appropriate small project areas in the schedule for medium or large project areas.

(4) Each schedule shall identify the number of project areas/management units in the classification and list, beginning 90 days after publication of these regulations, each project area to be reviewed either by month or by quarter.

(5) Initial review schedules must be submitted for approval to the appropriate FNS Regional Office so that they will be received no later than 90 days following publication of these regulations. Subsequent schedules shall be received by FNS 60 days prior to the date a current schedule becomes obsolete. These schedules must ensure that all project areas/management units will be reviewed within the required time limits.

(6) States shall notify the appropriate FNS Regional Office of all changes in review schedules.

(7) States should make every effort to schedule ME reviews of those project areas which experience significant influxes of migratory workers to coincide with such migrations.

§ 275.21 Quality control review reports.

(a) *General.* Each State agency shall submit reports on the performance of quality control reviews in accordance with the requirements outlined in this section. These reports are designed to enable FNS to monitor the State agency's compliance with Program requirements relative to the Quality Control Review System. Every case selected for review during the sample month must be accounted for and reflected in the appropriate report(s).

(b) *Individual cases.* The State agency shall report the review findings on each case selected for review during the sample month. For active cases, the State agency shall submit the edited findings of the Integrated Review Schedule, Form FNS-380-1. For negative cases, the State agency shall submit a summary report which is produced from the edited findings on individual cases which are coded on the Negative Quality Control Review Schedule, Form FNS-245. The review findings shall be reported as follows:

(1) The State agency shall input and edit the results of each active and negative case into the FNS supplied computer terminal and transmit the data to the host computer. For State agencies that do not have FNS supplied terminals, the State agency shall submit the results of each QC review in a format specified by FNS. Upon State agency request, FNS will consider approval of a change in the review results after they have been reported to FNS.

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FNS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FNS within 95 days of the end of the sample month.

(3) The State agency shall supply the FNS Regional Office with individual household case records and the pertinent information contained in the individual case records, or legible copies of that material, as well as legible hard copies of individual Forms FNS-380, FNS-380-1, and FNS-245 or other FNS-approved report forms, within 10 days of receipt of a request for such information.

(4) For each case that remains pending 95 days after the end of the sample month, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FNS determines that the above report does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FNS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of administrative funds in accordance with the provisions of § 276.4.

(c) *Monthly status.* The State agency shall report the monthly progress of sample selection and completion on the Form FNS-248, Status of Sample Selection and Completion or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 95 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month.

(d) *Annual results.* The State agency shall annually report the results of all quality control reviews during the review period. For this report, the State agency shall submit the edited results of all QC reviews on the Form FNS-247, Statistical Summary of Sample Distribution or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 95 days from the end of the annual review period. Every case selected in the active or negative sample must be accounted for and reported to FNS, including cases not subject to review, not completed, and completed.

(e) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (i.e., those cases described in § 275.11(g)) on the Form FNS-248, described in paragraph (c) of this section. In addition, the State agency shall identify the annual results of such cases on the Form FNS-247, described in paragraph (d) of this section.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 275.22 State corrective action plans.

(a) The first State Corrective Action plan prepared in accordance with the new regulations shall be submitted to FNS for approval so that it is received within 90 days of publication of these regulations. Subsequent to the approval of the original plan, proposed corrective action for all deficiencies identified as requiring State agency level action or combined State and project level action shall be received by FNS for approval within 65 days after identification. FNS may, when warranted, require State agencies to develop, submit, and implement corrective actions at any point within the 60-day development period. The State corrective action plan and all subsequent amendments shall be signed by either the State Welfare Commissioner or a designated official who has the authority to effect corrective action.

(b) State agencies shall advise FNS immediately upon becoming aware that previously reported corrective actions will not be effective in eliminating a deficiency or projected target dates will not be met. State agencies will then submit an update to the corrective action plan so that it is received by FNS within 65 days. When the reasons for inadequate corrective actions are unacceptable to FNS, the warnings specified in Part 276 will be applied.

§ 275.23 Administrative procedure.

Reports on program performance are intended to provide the State an opportunity to determine compliance with program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. States' reports enable FNS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. Reports must be submitted in duplicate to the appropriate FNS Regional Office according to the time frames established in §§ 275.20, 275.21, and 275.22 of this part.

Subpart G—Program Performance

§ 275.25 Determination of State agency program performance.

(a) FNS shall determine the efficiency and effectiveness of a State's administration of the Food Stamp Program by measuring:

(1) State compliance with the standards contained in the Food Stamp Act, regulations, FNS-approved State manuals and the State Plan of Operation; and

(2) State efforts to improve program operations through corrective action.

(b) This determination shall be made based on:

(1) Reports submitted to FNS by the State;

(2) FNS reviews of State agency operations;

(3) State performance reporting systems and corrective action efforts: and

(4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(c) *State agency error rates.* FNS shall estimate each State agency's error rates based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The State agency's active case error, payment error, underissuance error, and negative case error rates shall be estimated as follows:

(1) *Active case error rate.* The active case error rate shall include the proportion of active sample cases which were reported as ineligible or as receiving an incorrect allotment (as described in § 275.12(e)) based upon certification policy as set forth in Part 273.

(2) *Payment error rate.* The payment error rate shall include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate.

(3) *Underissuance error rate.* The underissuance error rate shall include the value of the allotments reported as underissued for those cases included in the active case error rate.

(4) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were reported as having been eligible at the time of denial or termination (as described in § 275.13(c)) based upon certification policy as set forth in Part 273.

(5) *Demonstration projects/SSA processing.* The reported results of reviews of active and negative demonstration project/SSA processed cases, as described in § 275.11(g), shall be excluded from the estimate of the active case error rate, payment error rate, underissuance error rate, and negative case error rate.

(d) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency, as described in § 277.4(b), FNS will:

(i) Validate the State agency's estimated active case error rate, payment error rate, underissuance error rate, and negative case error rate, as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State agency are FNS-approved procedures, as established in § 275.11; and

(iii) Validate the State agency's quality control completion rate to ensure that all of the minimum required sample cases, of both active and negative quality control samples, have been completed. This completion standard is applied separately to the active and negative case samples, and the State agency's estimated payment and underissuance error rates will be adjusted separately, if necessary, to account for those required cases not completed, in accordance with the procedures described in paragraph (e)(6)(iii) of this section for adjustment of the payment error rate.

(2) After validation and any necessary adjustment of estimated error rates, a State agency with a combined official payment error rate and underissuance error rate of five percent or less for an annual review period shall be eligible for a 60 percent Federally funded share of administrative costs, provided that the State agency's official negative case error rate for that period is less than the national weighted mean negative case error rate applicable to the period of enhanced funding.

(3) State agencies entitled to enhanced funding shall receive the additional funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (d)(2) of this section.

(e) *State agencies' liabilities for payment error rates.* (1) At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed, as described in paragraph (e)(6) of this section, and evaluated to determine whether the payment error rate goals established in the following paragraphs have been met.

(2) *Establishment of payment error rate goals.* (i) Each State agency's payment error rate goal for Fiscal Year 1983 shall be nine percent. Each State agency's payment error rate goal for Fiscal Year 1984 shall be seven percent. Each State agency's payment error rate goal for Fiscal Year 1985, and each fiscal year thereafter, shall be five percent. State agencies' payment error rates for any fiscal year shall be derived from the review period corresponding to the fiscal year.

(ii) If a State agency fails to achieve a nine percent payment error rate in Fiscal Year 1983 but reduces its payment error rate for Fiscal Year 1983 by 33.3 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate. If a State agency fails to achieve a seven percent payment error rate in Fiscal Year 1984, but reduces its payment error rate for Fiscal Year 1984 by 66.7 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate.

(iii) State agencies' payment error rates shall be rounded to the nearest one hundredth of a percent with .005 and above being rounded up to the next highest one-hundredth and .004 and below being rounded to the next lowest one-hundredth.

(3) *State agencies failing to achieve payment error rate goals.* Each State agency which fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds the goal for a fiscal year, FNS shall reduce the money it pays for the State agency's Food Stamp Program administrative costs by five percent for that fiscal year; provided that for every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds its goal by more than three percentage points, FNS shall reduce the Federally funded share of Food Stamp Program administrative costs by ten percent for the applicable fiscal year. Thus, if a State agency's reported error rate in Fiscal Year 1983 is 10.5 percent, its Federal administrative funding could be reduced by ten percent. A 13.1 percent error rate, or 4.1 percentage points above the goal, would result in a reduction of 5 percent for each of the three first points, 10 percent for the fourth point and another 10 percent for the fraction above 4 percentage points. This would amount to a 35 percent reduction in Federal administrative funds unless the provisions of paragraph (e)(3)(ii) are applicable to the State agency's circumstances.

(ii) If a State agency fails to reach its payment error rate goal but reduces its error rate as explained in paragraph (e)(2)(ii) for a given fiscal year it will bear no liability for its error rates. If, however, a State agency fails to reach the established goal and fails to meet the reduction percentage for Fiscal Year 1983 and/or 1984, its Federally funded share of program administrative costs shall be reduced by five percent for every percentage point, or fraction thereof, (with a 10 percent reduction applied for every percentage point or fraction above 3 percentage points) by which its error rate exceeds the payment error rate it would have achieved had it met the 33.3 or 66.7 percent reduction percentage for the applicable fiscal year. Thus, if a State agency's payment error rate during the October through March 1981 period was 13 percent and its error rate for Fiscal Year 1983 is 11 percent, it will have failed to achieve a 33.3 percent reduction $(13-(13-5)(33.3)=10.34$ percent), i.e., the rate the State agency would have achieved had it met the reduction percentage) and incurred a liability equal to five percent of its Federal administrative funding. If the State agency's payment error rate increased to 13 percent in Fiscal Year 1984, it will have missed a 66.7 percent reduction by 5.34 percentage points (13 − (13 − 5)(66.7) = 7.66 percent) and incurred a liability equal to 45 percent of its Federal administrative funding. In the latter example, the 45 percent funding reduction results from a 15 percent reduction for the first three percentage points and 30 percent for the additional 2.34 percentage points by which the State agency exceeded a 7.66 percent error rate.

(iii) If a State agency is found liable for an excessive payment error rate, the amount of liability will be calculated by: (A) Multiplying the percent the Federal share is to be reduced by the base Federal reimbursement rate of 50 percent; (B) subtracting the product of (A) from 50 percent; and (C) multiplying the result of (B) by the State agency's costs covered under the base Federal reimbursement rate for the fiscal year in which the State agency incurred the liability. For example, if the total administrative costs (State and Federal) in a State agency are $4,000,000 for the fiscal year, and the State agency's Federal funding is to be reduced by 25 percent, the State agency would be reimbursed at a rate of 37.5 percent (i.e., 50 percent minus 25 percent times 50 percent) or $1,500,000. The State agency's liability would be $500,000 or 12.5 percent of its administative costs.

(iv) A State's federally funded share of administrative costs shall not be reduced by an amount that exceeds the difference between its payment error rate goal (or what its error rate would have been had it met the reduction criteria of paragraph (ii) above) and its actual error rates expressed as a percentage of its total issuance during the fiscal year. Therefore, if the State agency in the above example issued $10,000,000 in food stamps in the fiscal year and exceeded its goal by four percentage points (as demonstrated by a 25 percent reduction in Federal funding), the State agency's liability would be capped at $400,000 ((.04)(10,000,000)), even though the calculation based upon administrative funds would result in a liability of $500,000.

(4) *Relationship to warning process and disallowance of funds.* (i) States' liability for payment error rates as determined above are not subject to the warning process of § 276.4(d). However, States shall be notified 30 days in advance of any billing and may request a good cause waiver or reduction at any time during the 30-day period. If a State requests a good cause determination, FNS shall hold the billing pending a decision on the good cause request. If a determination is made that good cause did not exist, FNS shall promptly issue the billing. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

(ii) FNS may reduce a State agency's share of Federal administrative funding under the provisions of this section or disallow administrative funds under the provisions of § 276.4(c). If a State agency's administrative funding is reduced under the provisions of this section and a portion is also disallowed under § 276.4(c), FNS shall adjust the billing if the disallowance is based upon noncompliance with a program requirement that would constitute a dollar loss reflected in the State agency's payment error rate to the extent that the disallowance and reduction are for the same deficiency and period of time. This adjustment shall ensure that a State agency is not doubled-billed for the same deficiency in its administration of the program. It shall be each State agency's responsibility to demonstrate the need for any adjustments.

(5) *Good cause and appeals.* (i) When a State is found to be liable for a portion of its payment error rate as described in paragraphs (d) (2) and (3) of this section, FNS may determine that the State had good cause for not achieving its payment error rate goal. FNS shall evaluate requests for a good cause determination based upon one or more of the following criteria:

(A) Natural disasters or civil disorders that adversely affect program operations;

(B) Strikes by State staff necessary to the determination of eligibility and processing of case changes;

(C) Significant caseload growth prior to or during a fiscal year of, for example, 15 percent;

(D) Changes in the food stamp or other Federal or State programs that have a substantial adverse impact upon management of the State's Food Stamp Program;

(E) Misapplication of Federal policy where such misapplication directly affects the State's QC error rates and was incorrectly provided or approved by an FNS representative who is reasonably believed to have the necessary authority; and

(F) Other circumstances beyond the control of the State.

(ii) If FNS determines that there was good cause for all or part of a State agency's error rate to exceed its goal in a fiscal year, FNS shall reduce or eliminate the State agency's liability as appropriate.

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with the procedures of § 276.7.

(6) *Determination of payment error rates.* As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate through rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) FNS shall adjust State agencies' estimated error rates based on findings of rereviewed cases. Once the Federal case reviews have been completed and all differences with the State agency have been resolved, the State agency's estimated error rate shall be adjusted using the following linear regression equation.

(A) $y' = y + b(X - x)$ where y' is the average value of allotments overissued to eligible and ineligible households; y is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding; b is the estimate of the slope parameter; x is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings; and X is the average value of allotments overissued to eligible and ineligible households in the full quality control sampling according to the State agency's findings.

(B) The adjusted error rates are given by $r = y'/u$, where u is the average value of allotments issued to participating households.

(C) After application of the provisions of paragraph (e)(6)(iii) of this section, the adjusted payment error rate will then become the State agency's official payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate based upon the best information available. After consultation with the State agency, this assigned payment error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (d) of this section. State agencies shall have the right to appeal assignment of an error rate in this situation in accordance with the procedure of § 276.7.

(iii) Should a State agency fail to complete all of its required sample size, FNS shall adjust the State agency's payment error rate by assigning two standard deviations of the estimated error rate to those cases not completed in order to calculate the State agency's official payment error.

(Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2029, as amended by Pub. L. 96-249, 94 Stat. 364-365, May 26, 1980)

[Amdt. 160, 45 FR 15912, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6311, Feb. 17, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Sec.

276.1 Responsibilities and rights.
276.2 State agency liabilities.
276.3 Negligence or fraud.
276.4 Suspension/disallowance of administrative funds.
276.5 Injunctive relief.
276.6 Good cause.
276.7 Administrative review process.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027), unless otherwise noted.

SOURCE: Amdt. 168, 45 FR 77263, Nov. 21, 1980, unless otherwise noted.

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons or cash shall be a strict State agency liability and the State agency shall pay to FNS, upon demand, the amount of the missing coupons or cash regardless of the circumstances of the loss.

(2) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Food Stamp Program. If FNS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Food Stamp Program, FNS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(3) State agencies shall be responsible for efficiently and effectively administering the Program by complying with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. A determination by FNS that a State agency has failed to comply with any of these provisions may result in FNS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FNS has the discretion to determine in each instance of noncompliance, whether to seek injunctive relief, to suspend or disallow administrative funds, to do both together, or to do each in sequence.

(b) *Rights.* State agencies have the right to appeal all claims brought against them by FNS and be afforded an administrative review by a designee of the secretary. State agencies also have the right to seek judicial review of any final administrative determination made by the Secretary's designee.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 237, 47 FR 57670, Dec. 28, 1982]

§ 276.2 State agency liabilities.

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. State agencies shall pay to FNS, upon demand, the amount of any such losses.

(b) *Coupon shortages, losses, unauthorized issuances and overissuances.* (1) State agencies shall be liable for coupon shortages and losses that occur after coupons have been accepted by receiving points within the State and that occur during the movement of coupons between bulk storage points and issuers within the State. State agencies shall also be liable for certain unauthorized issuances.

(2) Coupon shortages and/or losses for which State agencies shall be liable include, but are not limited to, shortages and losses due to the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency can not provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Mail issuance losses that exceed either of the appropriate tolerance levels set forth in § 274.3(c)(4) if applicable; and

(vi) Unexplained causes.

(3) State agencies shall be liable for the following unauthorized issuances:

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(i) The acceptance of expired ATP cards;

(ii) The acceptance of out-of-State ATP cards;

(iii) Duplicate issuances in areas in which photographic identification (photo ID) cards are required to be used, where reconciliation shows that (A) and ATP was improperly transacted and, (B) that the issuing agent has not complied with the photo ID verification and documentation requirements specified in §§ 274.2(e) and 274.2(f). Where provisions of the photo ID requirements have been waived by FNS the State agency would be liable for duplicate issuances when reconciliation shows that an ATP was improperly transacted and that the issuance agent has not complied with the verification and documentation requirements substituted by the waiver.

(iv) The acceptance of ATP cards lost by, stolen or embezzled from the State agency or from any point under agreement or contract with the State agency; and,

(v) The duplicate issuance of benefits caused by State agency error in those circumstances where the duplicate issuances could have been prevented by the State agency.

(4) State agencies shall be liable for the following overissuances of coupons:

(i) Overissuances that occur due to State agency failure to comply with a directive, issued by FNS in accordance with the provisions of § 271.7, to reduce, suspend or cancel allotments;

(ii) Overissuances that occur as a result of a court order or settlement agreement of a courtsuit that was not reported to FNS in accordance with the provisions of § 272.4(f), and,

(iii) Overissuances resulting from a State agency entering into an out-of-court settlement of a courtsuit which violates Federal law or regulations.

(5) Coupon shortages and losses shall be determined from the *Food Coupon Accountability Report* (Form-250) and its supporting documents, and from the *Reconciliation Report* (Form FNS-46). Losses of Federal monies resulting from overissuances shall be determined from sources such as audits, Performance Reporting System reviews, Federal reviews and investigations.

(c) *Cash losses.* State agencies are liable to FNS for cash losses when money collected by State agencies from participant claims has been lost, stolen, or otherwise not remitted to FNS by the State agency in accordance with the provisions of § 273.18(h). The amount of such losses shall be determined from sources such as audits, Performance Reporting System reviews, Federal reviews and investigations.

(d) *State agency payment to FNS.* State agencies shall be billed for the exact amounts of losses specified in this section. If a State agency fails to pay the billing FNS may offset the amount of loss from the State agency's Letter of Credit in accordance with § 277.16(c).

(91 Stat. 958 (7 U.S.C. 2011-2029); secs. 112, 113 and 114 of Pub. L. 97-35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97-253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 227, 47 FR 49012, Oct. 29, 1982; Amdt. 229, 47 FR 50683, Nov. 9, 1982; Amdt. 242, 48 FR 6865, Feb. 15, 1983; Amdt. 245, 48 FR 15226, Apr. 8, 1983]

§ 276.3 Negligence or fraud.

(a) *General.* If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, upon demand, pay to FNS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FNS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, the regulations issued pursuant to the Act, the FNS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from food stamp requirements contained in the Food Stamp Act, the food stamp regulations, the FNS-approved State Plan of Operation without first obtaining FNS approval, and the implementation of the procedures results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds due to negligence, FNS may use actual, documented amounts or amounts which have been determined through the use of statistically valid projections. When a statistically valid projection is used, the methodology will include a 95 percent, one-sided confidence level.

(3) FNS will base it determinations of negligence on information drawn from any of a number of sources. These information sources include, but are not limited to, State and Federal Performance Reporting reviews, State and Federal audits and investigations, State corrective action plans and any required reports.

(4) Failure by the State agency to remit payment upon demand, within the specified time period, may result in FNS recovering the lost funds through offsets to the State agency's Letter of Credit, in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FNS, within the time period specified, may result in offsets to the Letter of Credit in accordance with § 277.16(c).

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 276.4 Suspension/disallowance of administrative funds.

(a) *General provisions.* (1) FNS shall make determinations of the efficiency and effectiveness of State agencies' administration of the Food Stamp Program in accordance with the provisions of § 275.25. When making such determinations, FNS shall use all information that is available relating to State agencies' administration of the Program. This information includes, but is not limited to, information received from Performance Reporting System reviews, Federal reviews, audits, investigations, corrective action plans, financial management reviews, and the public.

(2) FNS may determine a State agency's administration of the Program to be inefficient or ineffective if the State agency fails to comply with the food stamp requirements established by the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation.

(3) If FNS determines that a State agency's administration of the Program is inefficient or ineffective, FNS may warn the State agency that a suspension and/or disallowance of administrative funds is being considered. After a State agency receives a warning, FNS may either suspend or disallow administrative funds or take both actions in sequence, depending on the statement in the warning.

(b) *Suspension.* A suspension of funds is an action by FNS to temporarily withhold all or a portion of the Federal share of one or more of the cost categories of a State agency's budget for administration of the Food Stamp Program. Suspensions of funds shall remain in effect until FNS determines that a State agency has taken adequate corrective action to correct the problem causing the suspension, in which event the suspension will be rescinded, or until FNS decides to disallow the suspended funds. FNS shall suspend funds in accordance with § 277.16.

(c) *Disallowance.* (1) A disallowance of funds is an action by FNS in which reimbursement is denied for otherwise reimbursable administrative costs claimed by a State agency in one or more of the cost categories of a State agency's budget for Program administration.

(2) In accordance with § 277.16, FNS has the option of disallowing funds in another cost category, or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. FNS may disallow funds after previously suspending such funds or may disallow funds im-

mediately following the expiration of the formal warning under the conditions specified in paragraph (e) of this section.

(d) *Warning process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to adhere to the cost principles of Part 277 and Appendix "A", FNS shall provide State agencies with written advance notification that such action is being considered. If a State agency does not respond to such an advance notification to the satisfaction of FNS, FNS shall provide the State agency with a formal warning of the possibility of suspension or disallowance action. However, when a State agency fails to meet the objectives in an FNS-approved corrective action plan, FNS may omit the advance notification and immediately issue a formal warning.

(1) *Advance notification.* Immediately upon becoming aware that a deficiency or deficiencies in a State agency's administration of the Program may warrant the suspension and/or disallowance of Federal funds, FNS shall advise the State agency in writing of the deficiency and shall provide a specific period of time for correction of such deficiency or deficiencies. The time period allowed the State agency for corrective action will vary according to the nature of the deficiency.

(2) *Formal warning.* FNS shall issue a formal warning to a State agency if the State fails to correct to the satisfaction of FNS the deficiencies noted in an advance notification within the time specified in the advance notification. FNS may also issue a formal warning to a State agency without first issuing an advance notification if a State agency fails to comply with an FNS-approved corrective action plan.

(i) Formal warnings shall include the following information:

(A) Specific descriptions of the deficiencies, explaining how the State agency is out of compliance with Program requirements;

(B) A Statement as to whether Federal funds will be suspended, disallowed or both, if appropriate;

(C) The amount of Federal funds that will be suspended and/or disallowed or an estimate of the amount if actual cost are unavailable; and

(D) A statement of FNS' willingness to assist State agencies is resolving the deficiencies.

(ii) A State agency shall have 30 days from receipt of a formal warning to submit evidence that it is in compliance or to submit a corrective action proposal, including the date the State agency will be in compliance.

(iii) When the deficiency cannot be corrected within 30 days of receipt of a formal warning but the State agency submits an acceptable plan for correcting the deficiency, FNS shall hold the formal warning in abeyance pending completion of the actions contained in the plan within the time specified in the plan.

(iv) FNS shall cancel a formal warning when the State agency submits evidence that shows, to the satisfaction of FNS, that the deficiency has been eliminated.

(e) *Suspension/disallowance of funds.* The Administrator of FNS shall notify State agencies in writing by certified mail or through personal service that administrative funds are being suspended or disallowed. Such action may occur when any of the following situations arise:

(1) A State agency fails to respond to the deficiencies cited in a formal warning within 30 days of receiving the warning;

(2) The response by a State agency to the deficiencies cited in a formal warning is unsatisfactory to FNS; or

(3) A State agency fails to meet the commitments it made in its corrective action proposal and a formal warning had been held in abeyance pending completion of that corrective action.

(f) *Appeals.* After FNS has taken action to disallow Federal funds the State agency may request an appeal in accordance with the procedures specified in § 276.7.

§ 276.5 Injunctive relief.

(a) *General.* If FNS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operations, the Secretary may seek injunctive relief against the State agency to require compliance. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

(b) *Requesting injunctive relief.* Prior to seeking injunctive relief to require compliance, FNS shall notify the State agency of the determination of noncompliance and provide the State agency with a specific period of time to correct the deficiency. The Secretary shall have the discretion to determine the time periods State agencies will have to correct deficiencies. If the State agency does not correct the failure within the specified time period and the Department decides to seek injunctive relief, the Secretary shall refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

§ 276.6 Good cause.

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FNS may determine that the State had good cause for the noncompliance. FNS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria:

(1) Natural disasters or civil disorders that adversely affect Program operations;

(2) Strikes by State agency staff;

(3) Change in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; and

(4) Any other circumstances in which FNS determines good cause to exist.

(b) If FNS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FNS shall not suspend or disallow administrative funds nor seek injunctive relief to compel compliance with the provisions and standards.

§ 276.7 Administrative review process.

(a) *General.* (1) Whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS claims that may be appealed are billings resulting from financial losses involved in the acceptance, storage, and issuance of coupons (§ 276.2), billings based on charges of negligence or fraud (§ 276.3), and disallowances of Federal funds for State agency failures to comply with the Food Stamp Act, regulations, or the FNS-approved State Plan of Operations (§ 276.4).

(2) A State agency aggrieved by a claim shall have the option of requesting a hearing to present its position in addition to a review of the record and any written submission presented by the State agency. Unless circumstances warrant differently, hearings of appeals of negligence claims and disallowances of Federal funds shall be before an Appeals Board and hearings of appeals of other claims shall be before a single hearing official. In any case, the people reviewing the claim shall be people who were not involved in the decision to file the claim.

(b) *Notice of claim.* FNS shall provide a notice by certified mail or personal service when asserting claims against State agencies.

(c) *Filing an appeal.* A State agency aggrieved by claims asserted against it may file written appeals with the Secretary, U.S. Department of Agriculture, c/o the Executive Secretary, State Food Stamp Appeals Board, Food and Nutrition Service, USDA, Washington, DC 20250, requesting an opportunity to present information in support of its position. The State agency shall attach a copy of the FNS claim to its appeal. Appeals must be filed with the Executive Secretary or postmarked within 10 days of the date of delivery of the notice of claim. If the State agency does not appeal within the prescribed 10-day period, the FNS decision on the claim shall be final. No extension shall be granted in the time allowed for filing an appeal.

(d) *Computation of time.* In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday.

(e) *Stay of administrative action.* With one exception, the filing of a timely appeal and request for administrative review shall automatically stay the action of FNS to collect the claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final determination has been issued. The exceptions to this provision are those claims that are asserted against State agencies due to State agency failure to comply with an order to reduce, suspend or cancel benefits in accordance with § 271.7. In situations where a State agency does not reduce, suspend or cancel benefits as directed and FNS takes action to disallow administrative funds or bill the State agency, the disallowance and/or billing shall remain in effect during the review process. Should the Appeals Board uphold the State agency, all disallowed funds and/or funds collected as a result of the billing shall be restored to the State agency promptly.

(f) *Acknowledging an appeal.* Upon receipt of an appeal and request for administrative review, the Executive Secretary shall provide the State agency with a written acknowledgment of the appeal, including a statement of whether or not the appeal is timely and can be accepted. A copy of each acknowledgment shall be provided to FNS. The acknowledgment of a timely and acceptable appeal and request for administrative review shall also include a copy of Secretary's Memorandum No. 2003, Revised, "State Food Stamp Appeals Board," and the identity of the Appeals Board member(s) designated by the Secretary to review the claim.

(g) *Submitting additional information.* (1) State agencies shall have 30 days from their request for an appeal to submit five sets of the following information to the Executive Secretary of the Appeals Board:

(i) A clear, concise identification of the issue or issues in dispute;

(ii) The State agency's position with respect to the issue or issues in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue or issues in dispute;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue or issues in dispute;

(v) The relief sought by the State agency;

(vi) The identity of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(2) At the request of the Executive Secretary, FNS shall promptly submit five complete sets of all documents, correspondence and records compiled by FNS in support of its claim.

(3) The Executive Secretary shall provide each person hearing an appeal and FNS with a complete set of the State agency information when it is received. The Executive Secretary shall also provide each person hearing an appeal and the State agency with a complete set of the information supplied by FNS when it is received.

(h) *Scheduling and conducting hearings.* When a hearing is afforded, the Appeals Board or hearing official has up to 60 days from receipt of the State agency's information, outlined in paragraph (g) of this section, to schedule and conduct the hearing. The Executive Secretary shall advise the State agency of the time, date and location of the hearing at least 10 days in advance of the hearing. The State agency is solely responsible for ensuring the attendance of all State agency witnesses at the hearing.

(1) A hearing is an informal proceeding designed to permit the State agency an opportunity to present its position before a neutral third party. Because the final determination is subject to judicial review and trial *de*

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novo, the Appeals Board and hearing official shall not be bound by the rules of civil procedure applicable in the court or by the adjudicatory requirements of the Administrative Procedures Act.

(2) The Appeals Board Chairman, his designee or the hearing official is the presiding officer at the hearing. The presiding officer shall have full authority to ensure a fair and impartial proceeding, avoid delays, maintain order and decorum, receive evidence, examine witnesses, and otherwise regulate the course of the hearing. The State agency may represent itself at the hearing or be represented by counsel.

(3) The Appeals Board or hearing official shall receive into evidence the oral testimony of State agency witnesses and any documents which are relevant and material. Neither the Department nor FNS is required to present witnesses at the hearing. However, the Department and FNS shall make staff available to provide any information or clarification requested by the Appeals Board or hearing official. Under no circumstances shall the Department or FNS introduce new evidence at the hearing. Departmental and FNS staff, as well as State agency witnesses, shall be subject to examination by the Appeals Board or hearing official. Departmental and FNS staff shall not be subject to cross-examination by State agency representative or counsel. Likewise, State agency witnesses shall not be subject to cross-examination by Departmental or FNS staff. Each side shall be permitted to make a closing statement to the Appeals Board or hearing official upon completion of the taking of evidence and testimony.

(4) FNS and the State agency shall have the opportunity to submit additional written information to the Appeals Board or hearing official within 10 days after the close of the hearing. No new factual material may be introduced except as it directly relates to evidence or testimony presented at the hearing. Five complete sets of such information must be filed with the Executive Secretary or postmarked prior of the expiration of the 10-day deadline for it to be considered.

(5) An official verbatim transcript of each hearing shall be kept on file in the Office of the Executive Secretary for public inspection. A copy shall be furnished to FNS and the State agency. Anyone wishing to purchase a copy may make arrangements to do so with the commercial reporting service involved.

(i) *Final determination.* (1) When a hearing is afforded, a final determination shall be made within 30 days of the hearing, and the final determination shall take effect 30 days after delivery of the notice of this final decision to the State agency. When a hearing is not held, a final determination shall be made within 30 days after receipt of the State agency's information. The final determination shall take effect 30 days after delivery of the notice of the final decision to the State agency.

(2) The Appeals Board or hearing official shall either uphold the claim, deny the claim, or adjust the claim downward in such amounts and for such reasons as the Appeals Board or hearing official shall determine and declare. The final determination is not subject to reconsideration.

(j) *Judicial review.* State agencies aggrieved by the final determination may obtain judicial review and trial *de novo* by filing a complaint against the United States within 30 days after the date of delivery of the final determination, requesting the court to set aside the final determination. The final determination shall remain in effect during the period the judicial review is pending unless the court temporarily stays such administrative action pending disposition of the complaint.

(k) *Extension of time.* (1) No extension of time shall be permitted a State agency in which to file an initial request for an administrative review. All other requests from the State agency or from FNS for the extension of any deadline contained in § 276.7 of these regulations or imposed by the Appeals Board or hearing official shall be granted only for good cause shown and only when received by the Executive Secretary before the expiration of the particular deadline involved. All requests for an extension shall be in writing. Filing a request for an extension stops the running of the prescribed period of time. When a request for an extension is granted, the requester shall be notified in writing of the amount of additional time granted. When a request is denied for being untimely or for cause, the requester shall be notified and the prescribed period of time shall resume from the date of denial.

(2) The Appeals Board or hearing official may grant itself such additional time as it may reasonably require to complete any of its assigned responsibilities. If the Appeals Board or hearing official does find it necessary to grant itself an extension of time, the Executive Secretary shall notify all parties in writing.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Sec.
277.1 General purpose and scope.
277.2 Definitions.
277.3 Budgets and budget revision procedures.
277.4 Funding.
277.5 Methods of payment.
277.6 Standards for financial management systems.
277.7 Cash depositories.
277.8 Bonding and insurance.
277.9 Administrative costs principles.
277.10 Program income.
277.11 Financial reporting requirements.
277.12 Retention and custody of records.
277.13 Property.
277.14 Procurement standards.
277.15 Food stamp investigations and prosecutions.
277.16 Suspension, disallowance and program closeout.
277.17 Audit requirements.
277.18 Establishment of an Automatic Data Processing (ADP) and Information Retrieval System.
APPENDIX A—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO ADMINISTRATION OF THE FOOD STAMP PROGRAM BY STATE AGENCIES

AUTHORITY: 91 Stat. 958, as amended (7 U.S.C. 2011-2027), unless otherwise noted.

SOURCE: Amdt. 188, 45 FR 85702, Dec. 30, 1980, unless otherwise noted.

EDITORIAL NOTE: OMB control numbers relating to this Part 277 are contained in § 271.8 published at 50 FR 2660, Jan. 18, 1985.

§ 277.1 General purpose and scope.

(a) *Purpose.* This part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the Food Stamp Program, and the Food Distribution Program and Food Stamp Program on Indian Reservations.

(b) *Scope and applicability.* Upon compliance with the provisions of this part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program and for administration of the Food Distribution Program on Indian Reservations. To ensure maximum practical uniformity, deviation(s) by a State agency from this part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this part must be authorized by the Administrator of FNS.

§ 277.2 Definitions.

For the purpose of this part the term:

"*Accrued expenditures*" means the charges incurred by the State agency during a given period for liabilities incurred, benefits received or for goods and services used during this period.

"*Accrued income*" means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

"*Acquisition cost*" refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

"*Approval or authorization by FNS*" means documentation evidencing consent prior to incurring specific costs.

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"*Applicable credits*" refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

"*Disbursements*" refers to the transfer of funds by the state agency to pay for Program costs resulting from purchased or expired goods and services.

"*Expendable personal property*" means all tangible personal property other than nonexpendable property.

"*Program funds*" means money, or property provided in lieu of money, paid for or furnished by FNS to a State agency.

"*Funds available to the State agency*" may include contributions from third parties including other Federal agencies.

"*In-kind contributions*" refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

"*Nonexpendable personal property*" means tangible personal property having a useful life of more than one year and an acquisition cost of more than $300 per unit. A State agency may use its own definiton of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

"*Obligations*" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

"*Offset*" means a method to recover funds due FNS through use of the Letter of Credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

"*OMB*" means the Office of Management and Budget.

"*Personal property*" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

"*Program*" means both the Food Stamp Program and the Food Distribution Program on Indian Reservations.

"*Program closeout*" means the process by which FNS determines that all applicable administrative and financial processes have been completed by the State agency and FNS terminates the program in the affected project area or areas.

"*Project costs*" are allowable costs as set forth in this part.

"*Real property*" means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

"*State agency*" means the organization as defined in 7 CFR Part 271.1.

"*State agency costs*" means the State agency outlays from its funds available for program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimbursable under this authority.

"*Subagency*" means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the program and which is accountable to the State agency for the use of funds provided.

"*Terms and conditions*" means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

"*Unliquidated obligation*" represents the amount of obligations not yet paid.

"*Unobligated balance*" means the portion of the Federal funds authorized less all allowable costs and unpaid obligations of the State agency.

§ 277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as specified in § 272.2. The application for funds and budget requirements for the Food Distribution Program on Indian Reservations shall be as specified in § 283.9. State agencies must submit a budget to FNS as part of the State Plan each fiscal year. Upon approval of the budget by FNS, administrative funds will be provided.

§ 277.4 Funding.

(a) *General.* This section sets allowable cost standards for activities of State agencies in administering the Food Stamp Program and Food Distribution Program on Indian Reservations.

(b) *Federal reimbursement rate.* The base percentage for Federal payment shall be 50 percent of State agencies' allowable Food Stamp Program administrative costs.

(1) A 75 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for:

(i) State fraud investigations, prosecutions, and fraud hearings upon presentation and approval of a State Plan Addendum as outlined in § 277.15.

(ii) State agency planning, designing, developing, or installing computerized systems as approved by the Food and Nutrition Service (FNS) and outlined in § 277.18.

(2) For the period beginning October 1, 1982, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the sum of the State agency's payment and underissuance error rates is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the fiscal year prior to the period of enhanced funding. The State agency's error rates shall be determined through the quality control review process as described in section 275.

(3) Funding of demonstration projects approved by FNS will be at a rate agreed to by FNS in accordance with the requirements outlined in Part 282.

(4) The reimbursement of administrative costs to State agencies administering the program on Indian reservations shall be in accordance with the requirements of Parts 281 and 283.

(5) For the period beginning October 1, 1980, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 65 percent when the State agency's cumulative allotment error rate is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(6) For the period beginning October 1, 1980, a State agency's federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State agency's cumulative allotment error rate is less than eight percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(7) For the 6-month period beginning October 1, 1980, a State agency with a 25 percent or greater reduction in its cumulative allotment error rate from one 6-month period to the comparable period of the next fiscal year shall be entitled to a 55 percent federally funded share of Food Stamp Program administrative costs; provided that, effective with the 6-month period beginning October 1, 1981, the State agency's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(8) Beginning October 1982, the federally funded share of administrative costs, as identified in paragraph (b) of this section may be decreased based upon its payment error rate as described in § 275.25. The rates of Feder-

al funding for the activities identified in paragraphs (b) (1), (3), and (4) of this section shall not be reduced based upon the agency's payment error rate.

(c) *Matching costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other non-Federal public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable;

(2) Are not contributed for another federally-assisted program, unless authorized by Federal legislation;

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this part;

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable for reimbursement purposes under the Food Stamp Program. The value of services rendered by volunteers shall be allowable only to meet any matching administrative costs requirements for the Food Distribution Program on Indian Reservations.

(Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2029), as amended by Pub. L. 96-249, 94 Stat 364-365, May 26, 1980)

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 201, 47 FR 25498, June 11, 1982; Amdt. 260, 49 FR 6313, Feb. 17, 1984]

§ 277.5 Methods of payment.

(a) This section sets forth FNS methods for authorizing funds for State agencies.

(b) The "Letter of Credit" (LOC) (SF-1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least $120,000 per year and meet the requirements prescribed in OMB Circular A-102, Attachment J.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF-183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(d) State agencies not meeting the requirements for the LOC method of payment or failing to meet LOC reporting requirements, including those requiring adjustments to cash balances to liquidate amounts owed to FNS, shall be provided funds by Treasury check in accordance with the provisions of Department of the Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to § 277.16. When a payment is withheld, payment adjustments will be made in accordance with § 277.16. When FNS collects an indebtedness, whether due to a disallowance or an offset for amounts which the State agency has been billed but which it has failed to pay without cause acceptable to FNS, FNS shall provide reasonable notice to the State agency, and shall require appropriate accounting adjustment to cash balances for which the State agency is accountable to the Federal government to liquidate the indebtedness.

§ 277.6 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its subagencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations as specified in § 277.16 and the disposition of these amounts. Accounting procedures must be in effect to prevent a State agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the State agency for all program funds, property, and other assets acquired with program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for program authorized purposes unless disposition has been made in accordance with § 277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in Appendix A to this part.

(7) Support and source documents for costs.

(8) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 277.17.

(10) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(c) The standards in § 277.6(b) apply to subagencies or contractors involved with program funding.

§ 277.7 Cash depositories.

(a) The term "cash depositories" refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FNS shall not:

(1) Require physical segregation in a cash depository of program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which program funds are deposited by the State agency.

§ 277.8 Bonding and insurance.

(a) *General.* In administering FNS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FNS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan guarantees.* FNS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the program. State agencies shall not make any assurances to any lender or contractor that FNS will furnish funds for loan payments.

§ 277.9 Administrative costs principles.

(a) This section prescribes specific policies and procedures governing State agencies for funding under this part.

(b) Any cost related to determining the Food Stamp eligibility of AFDC

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cases shall be included as part of the AFDC determination costs and claims. They are not allowable costs for FNS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section.

(1) *Direct cost.* Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this part.

(2) *Indirect cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this part and Appendix A.

(3) Direct and indirect costs claimed for program cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FNS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving program funds shall be submitted to FNS for review.

§ 277.10 Program income.

(a) Program income is gross income resulting from activities financed with program funds. Such earnings exclude interest income but include income from service fees, usage or rental fees, sale of assets purchased with program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of program administrative funds shall be remitted to FNS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances to tribal organizations under the Indian Self-Determination Act (sections 102 through 104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Program funds shall be remitted to FNS or applied to the Federal share of current program costs in accordance with § 277.13. All other sales proceeds will be handled in accordance with § 277.13.

(d) Unless there is a prior agreement between FNS and the State agency, the State agency shall have no obligation to FNS with respect to royalties received from copyrights or patents produced as a result of activities financed with program administrative funds.

(e) Any other income earned under activities supported by program administrative funds may be retained by the State agency if they are deducted from the gross program administrative costs for the purposes of determining net costs and FNS's share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects.

§ 277.11 Financial reporting requirements.

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FNS.

(b) *Authorized forms and instructions.* (1) Only forms specified by this part, or other forms authorized by FNS, may be used for obtaining financial information from State agencies for the program.

(2) All instructions for use in connection with the form specified in § 277.11(c) shall be followed. FNS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FNS approves a waiver of this requirement

(4) The forms and instructions in this part shall be available to the State agency and to the public upon request to FNS Regional Offices as set out in § 271.6(b).

(c) *Financial status report*—(1) *Form.* State agencies shall use the standard Financial Status Report (Form SF-269) to report program costs.

(2) *Freqency.* The report (Form SF-269) shall be required quarterly.

(3) *Exceptions.* Those State agencies that receive payments under the U.S. Treasury check system shall submit to FNS a Quarterly Report of Federal Cash Transactions (Form SF-272).

(4) *Due dates.* Quarterly reports shall be due April 30 (for the period January through March), July 30 (April through June), October 30 (July through September), January 30 (October through December). Final reports are due December 30 for all completed Federal fiscal years (October 1 through September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved, if necessary.

§ 277.12 Retention and custody of records.

(a) *Retention period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using program funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any book, documents, papers and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FNS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on public access.* Unless required by laws, FNS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the administrative funding provided by FNS except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FNS.

§ 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FNS funds, and ownership rights or intangible personal property developed, in whole or in part, with FNS funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section. With respect to property covered by this section, FNS may not impose on State agencies any requirement (including property reporting requirements) not authorized by this section unless specifically required by Federal laws.

(b) *Nonexpendable personal property*—(1) *Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FNS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and dispositions set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(ii) When there is no longer a need for the property to accomplish the purpose of the program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally-funded programs of FNS.

(B) Other federally-funded programs of USDA.

(C) Other federally-funded programs.

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than $1,000, the

State agency may use the property without reimbursement to FNS.

(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FNS for the FNS share of the property. The amount of compensation shall be computed by applying the percentage of FNS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than $1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of $1,000 or more per unit, the State agency shall:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency, the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS's share $100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of title to certain property.* (1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of $1,000 or more which is to be wholly borne by FNS is unique, difficult, or costly to replace, FNS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FNS.

(2) Such reservation shall be subject to the following:

(i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FNS may not exercise the right to reserve until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FNS a continued need for such use in the program.

(4) To exercise the right, FNS must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FNS's right shall lapse, and the State agency shall act in accordance with the applicable standards in paragraphs (b)(2) and (b)(3) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to FNS's disposition instructions.

(d) *Property management standards.* State agencies' property management standards for nonexpendable personal property covered by this section shall include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FNS funds used in the acquisition of the property, or sufficient information to be able to compute the percentage, if and when the property is disposed of.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property*—(1) *Title.* Title to expendable personal property, whose acquisition cost was borne in whole or in part by FNS, shall vest in the State agency.

(2) *Use.* The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(3) *Disposition.* When there is no longer a need for the property in the program and there is a residual inventory exceeding $1,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on non-federally sponsored activities; or,

(iii) Sell it.

(4) *Compensation.* FNS must be compensated for its share if the alternative in paragraph (e)(3)(i) of this section is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Patents and inventions.* If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FNS, such fact shall be promptly and fully reported to FNS. Unless there is prior agreement between the State agency and FNS on disposition of such items, FNS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Excecutive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in Title 37 CFR, Chapters I and II.

(g) *Copyrights.* When a program activity results in a book or other copyrightable materials, the author or State agency is free to copyright the work, but FNS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes copyrights on ADP software as specified in Appendix A.

§ 277.14 Procurement standards.

(a) *General.* This section establishes standards and guidelines for the procurement of supplies, equipment, construction and other services whose cost is borne in whole or in part by FNS program funds. These standards ensure that such materials are obtained in an effective and economical manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional procurement standards will be imposed by FNS upon State agencies unless specifically required by Federal law, or Executive orders, or authorized by the Administrator for Federal Procurement Policy, Office of Management and Budget.

(1) These standards do not relieve the State agency of any contractual responsibilities under its contracts. The State agency is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to sources evaluations, protests, disputes and claims. FNS shall not substitute its judgment for that of the State agency unless the matter is primarily a Federal concern. Violations of laws shall be referred to the local, State or Federal authority having jurisdiction.

(2) State agencies shall use their own procurement procedures provided that procurements paid in whole or in part with FNS program funds meet the standards set forth in this part.

(b) *Review of proposed contracts.* State agencies shall submit proposed contracts and related procurement documents to FNS for preaward review and approval when:

(1) The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation;

(2) The procurement expected to exceed $10,000 specifies a "brand name" product; or

(3) FNS has determined that the State agency's procurement procedures or operation fails to comply with one or more significant aspects of this section.

(c) *Code of conduct.* The State agency shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts borne in whole or in part with FNS program funds. No employee, officer, or agent of the State agency shall participate in the selection, or in the award or administration of a contract supported in whole or in part by FNS program funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

(1) The employee, officer, or agent;

(2) Any member of his/her immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. State agencies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) *Procurement procedures.* The State agency shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by State agency officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or dividing the purchase into smaller units, to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analyses, to determine which approach would be the most economical. To foster greater economy and efficiency, State agencies are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(e) *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* (1) It is FNS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. State agency affirmative steps shall include the following:

(i) Including qualified small and minority businesses on solicitation lists.

(ii) Assuring that small and minority businesses are solicited whenever they are potential sources.

(iii) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(iv) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(v) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration, as appropriate.

(vi) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (e)(1) (i) through (v) of this section.

(2) State agencies shall take similar appropriate affirmative action in support of women's business enterprises.

(3) State agencies are encouraged to procure goods and services from labor surplus areas, as defined by the Department of Labor.

(4) FNS shall impose no additional regulations or requirements in the foregoing areas unless specifically mandated by law or Executive order.

(f) *Selection procedures.* All State agency procurement transactions shall be conducted in a manner that provides maximum open and free competition with this section. Procurement procedures shall not contain features which restrict or eliminate competition. The State agency shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Descriptions shall not, in competitive procurements, contain features which unduly restrict competition. Descriptions may include a statement of the qualitative nature of the material, product or service desired and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a "brand name or equal" description may be used to define the performance or requirements of the material, product or service desired. The specific features of the named brand which must be met by offerors shall be clearly stated. State agencies shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) State agencies shall make awards only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) *Procurement methods.* State agency procurements made in whole or in part with program funds shall be by one of the following methods:

(1) *Small purchase procedures* are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than $10,000. State agencies shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the program, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In *competitive sealed bids* (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for the State agency to use this method of procurement the following conditions, as a minimum, must prevail:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the State agency's business.

(C) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice by the State agency to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the State agency indicates that such discounts are generally taken.

(E) Any or all bids may be rejected by the State agency when there are sound documented business reasons in the best interest of the program.

(3) In *competitive negotiation,* proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(iii) The State agency shall provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the State agency, price and other factors considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

(4) *Noncompetitive negotiation* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Awards of contracts by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive procurement;

(iii) FNS authorizes noncompetitive procurement; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(h) *Contract pricing.* The cost plus a percentage of cost and percentage of construction cost method(s) of contracting may not be used by a State agency. State agencies shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts, paid in whole or in part by FNS program funds, shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(i) *State agency procurement records.* State agencies shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the cost or price.

(j) *Contract provisions.* In addition to provisions defining a sound and complete procurement contract, State agencies shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by this provision, Federal law, or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by State agencies and their contractors or subagencies shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (29 CFR Part 60).

(4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subagency shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to FNS.

(5) Where applicable, all contracts awarded by State agencies and subagencies in excess of $2,000 for construction contracts in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the work is compensated at a rate of not less than 1½ times the basic rate for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) The contract shall include notice of FNS requirements and regulations

pertaining to reporting and print rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of FNS requirements and regulations pertaining to copyrights and rights to data so derived.

(7) All negotiated contracts (except those awarded by small purchases procedures) awarded by State agencies shall include a provision to the effect that the State agency, FNS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. State agencies shall require contracts to maintain all required records for three years after the State agency makes final payments or all other pending matters are closed, whichever is last.

(8) Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency (EPA) regulations, which prohibit the use under nonexempt Federal contract, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the FNS and to the USEPA Assistant Administrator for Enforcement.

(9) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-165).

(k) *Contract administration.* State agencies shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 277.15 Food stamp investigations and prosecutions.

(a) *General.* This section establishes the standards and procedures for Federal funding of State and local costs of intentional Program violation investigations, prosecutions and administrative disqualification hearings under the Food Stamp Program.

(b) *Funding.* Upon submission to and approval by FNS of a budget revision and the information required by paragraph (c) of this section, State agencies will be funded at 75 percent of all allowable direct and indirect costs in accordance with the requirement contained in this section. This higher rate may apply retroactively only to costs incurred in the Federal fiscal year during which a State agency applies for 75 percent funding, regardless of when the determination of eligibility for 75 percent funding is made. In cases where 75 percent funding of the operation of an agency other than the State welfare agency is or will be involved, an information statement shall be submitted by each State agency to include a description of such operations.

(c) *State agency descriptions.* Concurrent with the budget revision required in paragraph (d) of this section, the State agency shall submit the following information:

(1) Identification of the oganizational units, with a brief description of the intentional Program violation disqualification hearing, investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) A copy of the statutes or court decisions under which intentional Food Stamp Program violation cases are prosecuted;

(3) A detailed description of the coordination between the investigative units and the prosecuting units, and the process by which prosecuting officials present indictments regarding intentional Food Stamp Program violation cases;

(4) Agreement that investigative reports, prepared by the investigation or prosecution units, and other related

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records will be made available to USDA upon request; and

(5) Assurance that the administrative disqualification hearing activity claimed under this part is conducted in accordance with § 273.16.

(d) *Budget revision.* The State agency shall prepare and submit a budget revision in compliance with §§ 272.2 and 277.3 to FNS for approval.

(e) *Eligible activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of intentional Food Stamp Program investigations, prosecutions, and administrative disqualification hearings.

(1) *Direct charges.* Direct charges are costs which may be directly attributable to employees assigned specifically to the investigation and prosecution functions for intentional Food Stamp Program violations. Such employees need not be assigned full time, but in the event they are employed less than full time, time sheets or time records must be used to document the amount of time spent on these functions.

(i) For investigative function, only employees whose State or local job title is "Investigator" or a similar descriptive title shall be eligible for the increased funding. Exceptions shall be granted based on adequate justification that the majority of the job duties are specifically related to the investigative function.

(ii) Costs related to tne investigative or prosecutive function which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this Part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FNS.

(iii) Costs relating to the establishment and collection of claims, when performed by investigators or prosecutors or by any separate unit having claims establishment or collection as its primary function, shall be eligible for the increased funding.

(iv) Costs related to reporting individuals disqualified for intentional Program violation and to retrieving data from the Disqualification Reporting Network file, when performed by employees assigned specifically to the food stamp intentional Program violation investigation and prosecution functions.

(2) *Indirect charges.* Indirect charges are, in general, those costs which are attributable through allocation to the investigation and prosecution functions for intentional Food Stamp Program violations.

(3) *Documentation.* The requirements of Appendix A, Part 277, sections (2)(E), and (2)(F) will be followed for the classification and documentation of costs by the State or local agency.

(f) *Ineligible activity.* The following activities, whether performed at the State or local level, shall be allowable only at the 50 percent funding level, and shall be ineligible for funding at the 75 percent level.

(1) Administrative reviews, such as fair hearings as required per 7 CFR Part 273 or Performance Reporting System reviews required per 7 CFR Part 275.

(2) Investigations of authorized retail or wholesale food concerns except when performed in coordination with USDA Office of Inspector General and FNS.

(3) Investigations or establishing claims against households by workers whose regular duties include the determination of a household's eligibility for participation in the Food Stamp Program, except as may be granted under the provisions of paragraph (e)(1)(i) of this section.

(4) Verification of eligibility information provided by the household for the purpose of making an eligibility determination, and

(5) Audits.

(91 Stat. 958 (7 U.S.C. 2011-2029); secs. 112, 113 and 114 of Pub. L. 97-35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97-253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

[Amdt. 188, 45 FR 85802, Dec. 30, 1980, as amended by Amdt. 210, 47 FR 41096, Sept. 17, 1982; Amdt. 242, 48 FR 6865, Feb. 15, 1983]

§ 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation, FNS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with § 276.4. Adjustments will be made either by adjusting the Letter of Credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FNS may disallow costs in accordance with Part 276 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FNS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation.

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this part and Appendix "A".

(c) *Offsets to the Letter of Credit.* (1) FNS may recover funds when owed by the State agency to FNS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FNS to be disallowed under the provisions of this part;

(ii) Unallowable costs resulting from audit or investigation findings; or

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FNS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program transfer or termination.* (1) When termination or transfer of a State program has been agreed upon by FNS, the following closeout procedure shall be observed:

(i) Upon request, FNS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FNS any unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of termination of the program, all required financial, performance, and other reports. FNS may grant extensions when requested by the State agency.

(iv) FNS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FNS. The amounts of such billings shall be promptly remitted to FNS.

(v) In the event a final audit has not been performed prior to the closeout of the program, FNS shall retain the right to disallow costs or recover funds resulting from the final audit findings.

(2) Provisions of § 277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

§ 277.17 Audit requirements.

(a) *General.* This section sets forth the audit requirements for State agencies that receive FNS program funds. Audits shall be conducted on an organization-wide basis. Such audits are to determine whether:

(1) Financial operations are conducted properly;

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of Federal funds;

(4) Internal procedures have been established to meet the objectives of federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

Except where required by law, no additional requirements for audit will be imposed by FNS unless approved by the Office of Management and Budget (OMB). The provisions of this section do not limit the authority of FNS to make audits of State agencies, their subdivisions, and subcontracts. However, if independent audits arranged for by State agencies meet the requirements prescribed herein, FNS shall rely on them, and any additional audit work already done.

(b) *Audit standards.* (1) State agencies shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth in this section. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A-102, Attachment P.

(2) Audits shall be made in accordance with the General Accounting Office "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Program," and any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(c) *Purpose of audit.* Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues expenditures, assets, and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A-102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(d) *Audit coverage.* A representative number of charges to Federal funds shall be tested. The test shall be representative of:

(1) The universe of Federal funds received, and

(2) All cost categories that materially affect the award. The test is to determine whether the charges:

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatments and applied uniformly to both federally assisted and other activities of the State agency;

(iv) Were net of applicable credits;

(v) Did not include costs property chargeable to other federally assisted programs;

(vi) Were properly recorded (i,e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Financial Management Circular 74-4;

(viii) Were incurred in accordance with competitive purchasing procedures, if covered by OMB Circular A-102, Attachment O; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(3) Audits usually will be made annually, but not less frequently than every two years.

(4) If the auditors become aware of irregularities in the State agency, subagency or subcontractor, the auditor shall promply notify the cognizant agency and State agency management officials above the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds and other assets.

(e) *Audit report.* The audit report shall include:

(1) Financial statements, including footnotes, of the State agency, subagency, or subcontractor organization.

(2) The auditor's comments on the financial statements which should:

(i) Identify the statements examined and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amounts received for each program.

(iii) State that the audit was done in accordance with paragraph (d) of this section.

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditor's comments on compliance and internal control which should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulation that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements to Federal agencies.

(5) Comments on corrective action taken or planned by the State agency.

(f) *Record retention.* Work paper and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(g) *Cognizant agency responsibilities.* The cognizant agency shall have the following responsibilities:

(1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. If a non-Federal audit organization is responsible for audits of State agencies that have different cognizant audit agencies, a single quality assessment review will be arranged.

(2) Assure that all audit reports of State agencies that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

(3) Whenever significant inadequacies in an audit are disclosed, the State agency will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the State agency and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

(4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this section.

(5) Provide technical advice and act as a liaison between Federal agencies, independent auditors and State agencies.

(6) Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

(7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

(8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt the requirements in paragraphs (d) through (f) of this section. The recipient shall ensure that the subrecipient audit reports are received as required,

and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for those reports described in paragraph (g) of this section.

§ 277.18 Establishment of an Automatic Data Processing (ADP) and Information Retrieval System.

(a) *General.* A State agency may, at its option, receive Federal reimbursement at a 75 percent payment rate for the planning, design, development or installation of automatic data processing and information retrieval systems. An Advance Planning Document (APD) will be submitted to present requests and to document approvals. Except for Fiscal Years 1981 and 1982, a State agency shall first indicate its desire for 75 percent level of funding in corresponding State plans. FNS has issued Handbook 151, ADP Advance Planning Document Handbook for State Agencies, which provides detailed procedural guidelines for document preparation and submission for approval of costs. Additional guidance is contained in Appendix A to this part. The 75 percent funding level may be approved by FNS if the proposed system will:

(1) Assist the State agency in meeting the requirements of the Act;

(2) Meet such conditions as prescribed in this section;

(3) Be likely to provide more efficient and effective administration of the program; and

(4) Be compatible with other such systems utilized in the administration of State plans under the program of Aid to Families with Dependent Children (AFDC).

(b) *Funding.* Upon approval by FNS Regional Offices (FNSRO) of an APD, State agencies will be funded at the 75 percent rate for expenditures in connection with the approved system. This higher rate may apply retroactively, except that in no instance will such higher level funding be authorized for any costs which predate October 1, 1980.

(c) *Program functional standards.* In order to meet the requirements of the Act and ensure the efficient and effective administration of the program, the proposed system, must, at a minimum, meet the following applicable program standards:

(1) *Certification.* (i) Determine eligibility and calculate benefits or validate the eligibility worker's calculations by processing and storing all casefile information necessary for the eligibility determination and benefit computation, (including but not limited to all household member's names, addresses, dates of birth, social security numbers, individual household members' income by source: Earned and unearned, deductions, resources and household size). Redetermine or revalidate eligibility and benefits based on notices of change in households' circumstances;

(ii) Identify other elements that affect the eligibility of household members such as alien status, presence of an elderly person in the household, or status of periodic work registration;

(iii) Provide for an automatic cutoff of participation for households which have not been recertified at the end of their certification period;

(iv) Notify the certification unit (or generate notices to households) of cases requiring Notices of:

(A) Case disposition,

(B) Adverse Action and Mass Change, and/or

(C) Expiration;

(v) Provide for verification of income by means of comparison with records of other Federal and State programs (AFDC, Medicaid, SDX, BENDEX—benefits and wage data, State Employment Security Agency);

(vi) Prior to certification, crosscheck for duplicate cases for all household members by means of comparison with food stamp records within the relevant jurisdiction;

(vii) Provide the capability to effect mass changes: Those initiated at the State level, as well as those initiated from changes at the Federal level (eligibility standards, allotments, deductions, utility standards, SSI, AFDC, SSA benefits);

(viii) Identify cases where action is pending or follow-up must be pursued; for example, households with verification pending or households containing disqualified individuals or a striker;

(ix) Calculate or validate benefits based on restored benefits or claims collection, and maintain a record of the changes made;

(x) Store information concerning characteristics of all household members;

(xi) Provide for Social Security enumeration for all required household members; and

(xii) Provide for monthly reporting and retrospective budgeting as required.

(2) *Issuance, reconciliation and reporting.* (i) Generate authorizations for benefits in issuance systems employing ATP's, direct mail, or online issuance and store all Household Issuance Record (HIR) information including: Name and address of household, household size, period of certification, amount of allotment, case type (PA or NA), name, address of authorized representative, and racial/ethnic data;

(ii) Prevent a duplicate HIR from being established for presently participating or disqualified households;

(iii) Allow for authorized under or over issuance due to claims collection or restored benefits;

(iv) Provide for reconciliation of all transacted ATP's to the HIR masterfile. This process must incorporate any manually issued ATP's, account for any replacement or supplemental ATP's issued to a household, and identify cases of unauthorized and duplicate participation;

(v) Provide a mechanism allowing for a household's redemption of more than one valid ATP in a given month;

(vi) Generate data necessary to meet Federal issuance and reconciliation reporting requirements, including:

(A) Issuance

(*1*) FNS-259—Summary of mail issuance and replacements;

(*2*) FNS-250—Reconciliation of redeemed ATP's with reported authorized coupon issuance.

(B) Reconciliation: FNS-46—ATP Reconciliation Report.

(vii) Generate data necessary to meet other reporting requirements including:

(A) FNS-101—Program participation by race; and

(B) FNS-388—State coupon issuance and participation estimates.

(viii) Allow for sample selection for quality control reviews of casefiles, and for management evaluation reviews;

(ix) Provide for program-wide reduction or suspension of benefits and restoration of benefits if funds later become available and store information concerning the benefit amounts actually issued;

(x) Provide for expedited issuance of benefits within designated timeframes;

(xi) Produce and store a participation history covering 3 year(s) for each household receiving benefits; and

(xii) Provide for cut-off of benefits for households which have not been recertified timely.

(3) *General.* The following standards apply to all proposed systems:

(i) Perform all activities necessary to meet the various timeliness requirements established by FNS;

(ii) Allow for reprogramming to implement regulatory and other changes including a testing phase to meet implementation deadlines, generally within 90 days;

(iii) Generate whatever data is necessary to provide management information for the State's own use, such as caseload, participation and actions data;

(iv) Provide support as necessary for the State's management of Federal funds relative to Food Stamp Program administration, generate information necessary to meet Federal financial reporting requirements; and

(v) Provide for routine purging of case files and file maintenance.

(d) *Compatibility.* (1) State agencies seeking an enhanced level of funding for the planning, design, development or installation of automatic data processing and information retrieval systems must develop Statewide systems which are integrated with AFDC. In cases where a State agency can demonstrate that a local, dedicated or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the state's needs for automation. Systems

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funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State system used to administer AFDC. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(2) The system developed in response to these regulations will contain the following elements, where appropriate:

(i) A data base which receives information, sorts, performs calculations, and stores information;

(ii) An information retrieval system which will have the ability to access the data base, display, or print data and update the data in numerical or alphabetical form;

(iii) Hardware, in addition to that required for the data base, which will include visual display terminal(s) with an attached keyboard, connected to the data base hardware components by telephone lines;

(iv) Software which will include system programs for data recall and input, budget calculations capability when not included in the data base system, printout and display for data entry and inquiry terminals, and for network control; and

(v) Technological safeguards and managerial procedures will be established and applied to computer hardware, software, and data in order to ensure the protection of the integrity of the system and individual privacy (ADP system security). System security shall be inherent in the system and provided for in the APD submitted for approval. The system will process machine readable data files used for the authorized exchange of information between levels of government (i.e., State to State, State to Federal).

(e) *Prior approval process.* (1) Feasibility studies or advance planning documents which are designed for analysis of future compatible ADP systems are considered management studies and require prior approval by FNS. FNSRO's shall be responsible for approval of requests for 75 percent funding of compatible ADP systems.

(i) A feasibility study is required for approval of funding at the 75 percent level. State agencies may apply for 75 percent funding of a study by letter request which describes the study. State management information systems staff, program staff, cost analysts and other staff officials shall provide input to the final study report.

(ii) An APD may result from a favorable feasibility report. The cost of resources used to produce the APD may be funded at the 75 percent level regardless of final approval or denial of the APD. The APD package will be simultaneously submitted to the appropriate FNSRO and the Assistant Secretary for Management and Budget, Department of Health and Human Services *except* that a single agency APD will be processed by FNSRO to approve 75 percent funding when an exception to the compatible system has been justified, in accordance with paragraph (d)(1) of this section.

(2) Funding of costs for system development and hardware procurement and installation will continue at the 75 percent level when those project phases progress according to the approved APD.

(i) In-progress changes which are not within the scope or context of the originally approved APD and which will result in costs above those projected in the APD and for which 75 percent funding is sought shall be submitted to FNSRO in writing promptly following a decision to change by letter entitled "notice of change and increased cost" which will be considered and responded to promptly by FNSRO.

(ii) If FNS suspends approval of an APD in the course of a State agency's planning, designing, development, or installation, the 75 percent level of funding shall not be allowable for any costs incurred until such time as the conditions for approval are met.

(3) APD's will include cost distribution budgets, presented on a federal fiscal year basis in a clear fashion to associate costs with each developmental piece and/or functional module.

(i) Where costs are incurred for more than one program, these costs will be organized into pools of related administrative activities and allocated on an acceptable basis agreed to in advance by appropriate officials, or based on a previously approved cost allocation method. The resulting dollar amounts will be funded by FNS along with single program element costs at the 75 percent level.

(ii) Budgets must identify all development costs separately from any ongoing operational costs. Costs must be distinguished by developmental projects and developmental time periods. Actual costs claimed must be reconcilable to projected costs which appeared in the FNS approved budget.

(4) Approval of APD's for payment by FNS of costs at the 75 percent level will be limited to:

(i) Development, *i.e.,* detailing of system and program specifications, programming, and testing;

(ii) Installation, *i.e.,* conversion, training of staff, and turnover to operational status.

(5) Costs may not be funded at 75 percent when the approved system produces automated processing of food stamp recipient applications, issuance authorizations or other reports (operations) on a continuing basis for use by State agency personnel for administration of the Food Stamp Program. Operations includes the use of purchased or rented computer equipment and software directly required for and used in the operation of the automated data processing and information retrieval system. Pilot testing and an initial period of parallel processing for test purposes shall not be considered as operations.

(6) FNS approval of requests for 75 percent funding will provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FNS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization will be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FNS approval of an amended State budget for payment. Requests to amend the budget authorization approved by FNS must be submitted to the FNSRO prior to claiming such expenses at the 75 percent level.

(7) The complete system and hardware acquired, will be used for a period of time which is consistent with the APD as approved, or which FNS determines is sufficient to justify the related expenditure of Federal funds.

(f) *Cost elements.* Incident to the activities listed in paragraph (e) of this section, a State agency may seek payment for the following expenses at a 75 percent level:

(1) *Personnel.* Salaries, wages, travel, and benefits of personnel actually engaged in design, development, or installation of approved ADP systems;

(2) *Materials, equipment, facilities, and supplies.* Costs of materials, equipment, facilities and supplies used in design, development, or installation of approved ADP systems. Only the proportionate share of the costs of capital assets assignable to the period of time or prorated for usage may be claimed during the design, development, or installation of these systems. This share must be determined based on acquisition costs and/or depreciation or approved usage rates. Data with respect to such costs shall be submitted with the request for funding;

(3) *Contracted services.* Services obtained under the provisions of contracts which meet the procurement standards of this part for the design, development, or installation of FNS approved systems;

(4) *Management studies and other planning.* The proportionate share of the costs of a feasibility study and preparation of APD's.

(g) *Cost determination.* Actual costs must be determined in compliance with an FNS-approved budget and Appendix A to this part, and must be reconcilable with the FNS funding level. There shall be no payments pursuant to this section to the extent that a State agency is reimbursed for such costs pursuant to any other federal program or uses ADP systems for purposes not connected with the Food Stamp Program. The cost allocation plan must be amended to disclose the methods which will be used to identify and classify costs to be claimed at the 75 percent rate. This methodology must be submitted to the appropriate

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FNSRO as part of the request for FNS approval of funding at the 75 percent rate as required in Appendix A to this part. Any costs matched pursuant to these regulations shall be excluded in determining the State agency's administrative costs under any other section of this part.

(h) *Specifications.* Specification for system hardware components, software, and services purchased from commercial suppliers or individuals will be submitted to FNS for review as part of the APD.

(1) The management of contracting and contract administration procedures is to be accomplished according to the State's own policies and the provisions of § 277.14. Procurement actions not in accordance with the procurement standards set forth in § 277.14 shall not be funded at the 75 percent level.

(2) The State will have all ownership rights in software or modifications thereof and associated documentation designed or developed with 75 percent FNS funding under this section, except that FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal purposes, such software, modifications, and/or documentation.

(3) The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which are covered in § 277.13 are applicable to automatic data processing equipment purchased with enhanced funding.

[Amdt. 201, 47 FR 25499, June 11, 1982, as amended at 50 FR 20550, May 17, 1985]

Appendix A—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

This appendix sets forth the procedures implementing uniform requirements for the negotiations and approval of cost allocation plans with State agencies, in accordance with the provisions of Federal Management Circular (FMC) 74-4 and OASC-10, "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," U.S. Department of Health, Education, and Welfare. This material is adapted substantially from the circular; changes have been made only when necessary in order to conform with legislative constraints.

(A) Purpose and scope.

(1) *Objectives.* This appendix sets forth principles for determining the allowable costs of administering the Food Stamp Program by State agency under FNS-approved State Plans of Operation. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of the Program. They are designed to provide that all federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

(2) *Policy guides.* The application of these principles is based on the fundamental premises that:

(a) State agencies are responsible for the efficient and effective administration of the Food Stamp Program through the application of sound management practice.

(b) The State agency assumes the responsibility for seeing that Food Stamp Program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each State agency, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques as may be necessary to assure proper and efficient administration.

(3) *Application.* These principles will be applied by FNS in determining costs incurred by State agencies receiving FNS payments for administering the Food Stamp Program.

(B) Definitions.

Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs of program administration together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to FNS as a discharge of the State agency's accountability for FNS funds.

Cost center means a pool, summary account, objective or area established for the accumulation of costs. Such areas include objective organizational units, functions, objects or items of expense, as well as ultimate cost objective(s) including specific costs, products, projects, contracts, programs and other operations.

Federal agency means FNS and also any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

Payments for administrative costs means reimbursement or advances for costs to State agencies pursuant to any agreement whereby FNS provides funds to carry out programs, services, or activities in connection with administration of the Food Stamp Program. The principles and policies stated in this Appendix as applicable to program payments in general also apply to any State agency obligations under a cost reimbursement type of agreement performed by a subagency, including contracts and subcontracts.

Food Stamp Program administration means those activities and operations of the State agency which are necessary to carry out the purposes of the Food Stamp Act, including any portion of the Program financed by the State agency.

Local unit means any political subdivision of government below the State level.

Other agencies of the State means departments or agencies of the State or local unit which provide goods, facilities, and services to a State agency.

Subagencies means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food Stamp Program and which is accountable to the State agency for the use of the funds provided.

Service, as used herein, means goods and facilities, as well as services.

Supporting services means auxiliary functions necessary to sustain the direct effort of administering the Program. These services may be centralized in the State agency or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

(C) Basic guidelines.

(1) Factors affecting allowability of costs. To be allowable under the Program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the Program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal Laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the State agency is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost to any other federally financed program in either the current or a prior period.

(g) Be the net of all applicable credits.

(2) Allocable costs.

(a) A cost allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular program or cost objective under these principles may not be shifted to other Federal programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to the Program, an allocation plan will be required as prescribed in Section I of these principles.

(3) Applicable credits.

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than FNS to finance operations or capital items donated or financed by the Federal Government to fulfill matching requirements under another program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given program.

(D) Composition of cost.

(1) *Total cost.* The total cost of a program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credit.

(2) *Classification costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a program or other ultimate cost objective. However, it is

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essential that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under the Program are provided in the section which follows.

(E) Direct costs.

(1) *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to the Program, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in the course to programs and other ultimate costs objectives.

(2) *Application.* Typical direct costs chargeable to the Program are:

(a) Compensation of employees for the time and effort devoted specifically to the administration of the Program.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the Program.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specifically for efficiently and effectively administering the Program.

(e) Service furnished specifically for the Program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

(F) Indirect costs.

(1) *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the result achieved. The term indirect cost as used herein applies to costs of this type originating in the State agency, as well as those incurred by other departments in supplying goods, services, and facilities, to the State agency. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a State agency or in other agencies providing services to a State agency. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

(2) *State agency indirect costs.* All State agency indirect costs, including the various levels of supervision, are eligible for allocation to the program provided they meet the conditions set forth in their principles. In lieu of determining the actual amount of State agency indirect cost allocable to the program the following methods may be used:

(a) *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to program administration may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties to reach an informed judgment (1) as to the probable level of indirect costs in the State agency during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

(b) *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a State agency's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the State agency before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

(3) *Limitation on indirect costs.*

(a) Some Federal programs may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor programs of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such program does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under these principles, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under a program may not be shifted to another federally sponsored program or contract.

(G) Cost incurred by other agencies of the State.

(1) *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

(2) *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service

furnished by other agencies of the State, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

(a) *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by other agencies of the State (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F(2)(a) of these principles.

(H) Cost incurred by State agency for others. The principles provided in section G will also be used in determining the cost of services provided by the State agency to another agency.

(I) Cost allocation plan.

(1) A cost allocation will be required to support the distribution of any indirect costs. All costs allocable to the Food Stamp Program under cost allocation plans will be supported by formal accounting records which will substantiate the propriety of eventual charges.

(2) There are two types of cost allocation plans:

(a) Statewide or central service cost allocation plan identifies and distributes the cost of services provided by support organizations to those departments or units participating in Federal programs.

(b) Indirect cost proposals distribute the administrative or joint costs incurred by the State agency and the cost of service allocable to it under the Statewide or central service cost allocation plan in a ratio to all work performed by the State agency. The process involves applying a percentage relationship of indirect cost to direct cost.

(3) *Requirements.* The cost allocation plan of the State agency shall cover all allocated costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the State agency, to the extent feasible, should be presented in a single document.

(4) *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State agencies in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual State agencies.

(5) *Submitting plans for approval.*

(a) Responsibility for approving cost allocation plans for individual State agencies has been assigned by the Office of Management and Budget to the cognizant Federal agency.

(b) State cost allocation plans must be submitted to the cognizant Federal agency within six months after the last day of the State's fiscal year. Upon request by the State agency, an extension of time for submittal of the cost allocation plan may be granted by the cognizant Federal agency. It is essential that cost allocation plans be submitted in a timely manner. Failure to submit the plans when required will cause the State agency to become delinquent. In the event a State becomes delinquent, FNS will not provide for the recovery of central service and indirect costs, and such costs already made and claimed against Food Stamp Program funds will be subject to disallowance.

(6) *Negotiation and approval of cost allocation plans for States.* The cognizant Federal agency, in collaboration with Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans.

(7) *Negotiation and approval of cost allocation plans for local governments.* Cost allocation plans will be retained at the local government level for audit by the cognizant Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(8) A current list of cognizant Federal agencies is maintained by the Office of Management and Budget.

(9) *Resolution of problems.* The Office of Management and Budget will lend assistance in resolving problems encountered by Federal agencies on cost allocation plans.

(10) Approval by FNS. FNS reserves the right to disapprove costs not meeting the general criteria outlined in Section C of these principles. FNS shall promptly notify the State agency in writing of the disapproval, the reason for the disapproval and the effective date. Costs incurred by State agencies after disapproval may not be charged to FNS unless if FNS subsequently approves the cost.

Standards for Selected Items of Cost

A. *Allowable cost.* Standards for allowability of costs are established by Federal Management Circular 74-4. These standards will apply regardless of whether a particular item of cost is treated as direct or indirect. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable. Rather, determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles as stated in Attachment A to Federal Management Circular 74-4.

(1) *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of the Food Stamp Program is allowable. This includes costs incurred by central service agencies of the State government for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the Program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the agreement; and

(d) Other purposes specifically provided for by FNS regulations or approved by FNS in the administration of the Food Stamp Program.

(3) *Advisory councils.* Costs incurred by State advisory councils or committees established to carry out Food Stamp Program goals are allowable. The cost of like organizations is allowable when used to improve the efficiency and effectiveness of the Program.

(4) *Audit service.* The cost of audits necessary for the administration and management of functions related to the Program is allowable.

(5) *Bonding.* Costs of premiums on bonds covering employees who handle Food Stamp Program funds or food coupons are allowable. The amount of allowable coverage shall be limited to the anticipated maximum amount of food stamp funds or food coupons handled at one time by that employee.

(6) *Budgeting.* Costs incurred for the development, preparation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the State agency's budget process, the cost of services identifiable to the Food Stamp Program are allowable.

(7) *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(8) *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for the Food Stamp Program is allowable.

(9) *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

(10) *Compensation for personal services.*

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance in the administration of the program including but not necessarily limited to wages, salaries, and supplementary compensation and benefits as defined in Section A.(13) of these principles. The costs of such compensation are allowable to the extent that total compensation for individual employees: is reasonable for the services rendered; follows an appointment made in accordance with State or local government laws and rules and which meets Federal Merit System or other requirements, where applicable; and is determined and supported as provided in Section A of these principles. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Food Stamp Program activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and distribution of time.* Amounts charged to the program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the State or local agency. Payrolls must be supported by time and attendence or equivalent records for individual employees. Distribution of salaries and wages of employees chargeable to more than one program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by FNS.

(11) *Depreciation and use allowance.*

(a) State agencies may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowances will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost of any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of acquisition of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by FNS.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(12) *Disbursing service.* The cost of disbursing program funds by the State Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

(13) *Employee fringe benefits.* Costs identified are allowable to the extent that total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are provided pursuant to an approved leave system, and the cost thereof is equitably allocated to all related activities, including federally assisted programs.

(b) Employee benefits in the form of employers' contributions or expense for social security, employees' life and health insurance plans, unemployment insurance coverage, workers' compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to programs and to other activities.

(14) *Employee morale, health And welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

(15) *Exhibits.* Costs of exhibits relating specifically to the Food Stamp Program are allowable.

(16) *Legal expenses.* The cost of legal expenses required in the administration of the program is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government is unallowable.

(17) *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

(18) *Materials and supplies.* The cost of materials and supplies necessary to carry out the program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the State agency. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

(19) *Memberships, subscriptions and professional activities.*

(a) The *cost of membership* in civic, business, technical, and professional organizations is allowable, provided:

(i) The benefit from the membership is related to the program,

(ii) The expenditure is for agency membership,

(iii) The cost of the membership is reasonably related to the value of the services or benefits received, and

(iv) The expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(c) *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the program and they are consistent with regular practices followed for other activities of the State agency.

(20) *Motor pools.* The costs of a service organization which provides automobiles to user State agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

(21) *Payroll preparation.* The cost of preparing payrolls and maintaining necessary wage records is allowable.

(22) *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for the program are allowable.

(23) *Printing and reproduction.* Cost for printing and reproduction services necessary for program administration including but not limited to forms, reports, manuals, and information literature, is allowable. Publication costs of reports or other media relating to program accomplishments or results are allowable.

(24) *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for the program is allowable.

(25) *Taxes.* In general, taxes or payments in lieu of taxes which the State agency is legally required to pay are allowable.

(26) *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits the program is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by FNS.

(27) *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(28) *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two. The charges must be consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available. Notwithstanding the provisions of paragraphs C (7) and (10), travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

B. *Costs allowable with approval of FNS.*

(1) *General-acquisition requirement.* A State shall obtain prior written approval from FNS when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of $100,000 or more in Federal and State funds over a 12-month period, or $200,000 or more in Federal or State funds for the total acquisition. A State shall also obtain prior written approval from FNS when it plans to acquire noncompetitively from a commercial source ADP equipment or services that cost more than $25,000 in Federal and State funds. A State shall notify FNS when it plans to acquire ADP equipment or services that will cost $25,000 to $100,000 over a 12-month period in Federal and State funds. The State shall send the prior notice of acquisition to FNS 60 days before the planned acquisition.

(2) *Definitions.*

(a) *"Acceptance documents"* means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

(b) *"Advance Planning Document" or "APD"* means a written plan of action to acquire the proposed ADP services, system, or equipment. The APD must contain a statement of needs and objectives:

(i) The feasibility study;

(ii) A preliminary cost/benefit analysis including lease/purchase options;

(iii) A personnel resource statement indicating availability of qualified and adequate staff including a project director to accomplish the project objectives;

(iv) A detailed description of the nature and scope of the activities to be undertaken and the methods to be used;

(v) A proposed schedule;

(vi) A proposed budget; and

(vii) A statement indicating the period of time for which the services, system, or equipment described are expected to be used; for integrated computer systems, a statement of the percentage allocated to FNS and a breakdown or explanation of how the percentage was determined.

(c) *"Automatic Data Processing" or "ADP"* means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

(d) *"Automatic Data Processing equipment" or "ADP equipment"* means:

(i) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;

(ii) All peripheral or auxiliary equipment used in support of electronic computers whether selected and acquired with the computer or separately;

(iii) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic computer; and

(iv) "Data input equipment" means equipment used to enter data directly or indirectly into an electronic digital computer; peripheral or auxiliary equipment; or data transmission or communication equipment.

(e) *"Automatic Data Processing services" or "ADP services"* means:

(i) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(ii) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation.

(f) *"Data processing"* means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording and transmitting.

(g) *"Feasibility study"* means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant the substantial investment of staff, time, and money. The study shall project for a three year period the requirements for ADP equipment, services, and systems.

(h) *"Request for proposal" or "RFP"* means the document used for public solicitations of competitive proposals from qualified sources as outlined in 7 CFR 277.14.

(i) *"Service agreement"* means a document signed by the State or local agency and a second State or local organization providing ADP services to the State or local agency which:

(i) Identifies those ADP services to be provided by the provider agency;

(ii) Includes, preferably as an amendable attachment, a schedule of changes for each identified ADP service, and a certification that these charges apply equally to all users;

(iii) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services changes;

(iv) Includes assurances that services provided shall be timely and satisfactory; and

(v) Requires the provider agency to obtain prior State agency approval and to follow competitive procurement procedures equivalent to those contained in 7 CFR 277.14 for the acquisition of any ADP services in support of or in addition to the service agreement.

(j) *"Software"* means a set of computer programs, procedures, and associated documentation by which ADP equipment is used and operated.

(k) *"System design"* means the putting together of a new or more efficient ADP system which avoids the deficiencies and discrepancies in the old system.

(l) *"System specifications"* means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data which is required to determine the ADP equipment and software necessary to implement the system design.

(m) *"System study"* means the examination of existing information flow and operational procedures within an organization to determine how to provide more timely, accurate, and meaningful information for management decision-making and to develop new or improved ADP systems to service, control and coordinate the activities of the organization to improve operational efficiency. The study essentially consists of three basic phases: data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(3) *Obtaining approval.* Prior approval by FNS is required for costs of ADP equipment or ADP services in support of the Food Stamp Program which exceed $100,000 in combined Federal and State funds per project. Requests for Approvals must be forwarded through the State agency prior to submittal to FNS. Approval by FNS will be

based on a review of the studies conducted by or for the agency that will justify the acquisition of the proposed ADP equipment or ADP services. Written approval of the Advance Planning Document must be obtained from FNS by the State agency prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or ADP services.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submittal for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and ADP services not requiring prior approval by FNS.

(5) *Competitive procurement.* Acquisition of ADP equipment and purchase of ADP services shall be based on competitive procurement procedures specified in 7 CFR 277.14 when Food Stamp Program funds are involved. State agency officials responsible for such procurement will ensure that formal advertising is the method of procurement unless the conditions for negotiation in 7 CFR 277.14 are met. Notwithstanding the existence of circumstances justifying negotiation, competitive procurement shall be obtained to the maximum extent practicable. The competitive procurement policy shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(6) *Submittal of documents.*

(a) Prior to claiming funding under the Food Stamp Program the State agency will be required to submit:

(i) The Advance Planning Document;

(ii) The Service Agreement (when data processing services are to be provided by a State central data processing facility or by another State or local agency);

(iii) The Request for Proposal, prior to its issuance when service or equipment proposals are being solicited from commercial sources; and

(iv) The Contract, prior to signature of the contracting officer when services or equipment are to be acquired commercially.

(b) Voluntary submittal, or when requested by FNS, will be made of:

(i) The system study,

(ii) The system design,

(iii) The system specifications,

(iv) The acceptance document.

(7) *Methods for charging costs.* Methods and procedures for properly charging the costs of all systems whether acquired from public or private sources shall be in accordance with this regulation and applicable FNS instructions.

(8) *Access.* Access to the system by FNS in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State at intervals as are deemed necessary by FNS to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in termination of Food Stamp Program funds in the costs of the system and its operation.

(9) *Ownership rights.*

(a) *Software.* The State will have all ownership rights in software or modification thereof and associated documentation designed, developed or installed with Food Stamp Program funds except that FNS reserves a royalty-free, nonexclusive license to reproduce, publish, or otherwise use, and to authorize others to do so, such software, modification and documentation. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions of this section.

(b) *Automatic data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which are covered in 7 CFR 277.13 are applicable to automatic data processing equipment.

(10) *Use of ADP system.* ADP systems designed, developed or installed with Food Stamp Program funds shall be used for a period of time consistent with the Advance Planning Document as approved, or which FNS shall determine is sufficient to justify the Federal funds invested.

(11) *Basis for continued Federal financial participation.* Periodic onsite surveys and reviews of State and local agency ADP methods and practices may be conducted by or for FNS to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes for which Federal funds were authorized. Such surveys may include:

(a) *Pre-installation readiness.* A pre-installation survey including an onsite evaluation of the physical site and the State agency's readiness to use the proposed ADP services, equipment or system when installed and operational.

(b) *Post-installation.* A review conducted after installation of ADP equipment or systems to assure that the objectives for which Federal Financial Participation was approved is being accomplished.

(c) *Utilization.* A continuing review of ADP facilities to determine whether or not the ADP equipment or services are being efficiently and effectively utilized in support of the Food Stamp Program. Should FNS determine from such surveys or reviews or otherwise that the State agency has improperly used Food Stamp Program funds, funding may be invoked. Such termination would be limited to the costs of the data processing services or equipment in question as specified in the written notification of termination by FNS.

(12) *Application of this section.* The conditions of this section apply for initial and continuing authority to claim Food Stamp Program funding for automatic data processing services and equipment. Due to the nature of the procurement of ADP equipment and services, approved cost allocation plans will not be valid unless documentation required under paragraph B(1) of this section is submitted and approvals are obtained.

(13) *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the Program is allowable subject to the following conditions.

(a) The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.

(b) The cost of space may not be charged to FNS for periods of nonoccupancy, without authorization of FNS.

(i) *Rental cost.* The rental cost of space in a privately-owned building is allowable.

(ii) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(iii) *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the program or those that materially increase the value or useful life of the facilities (section B(3) of these principles) are allowable when specifically approved by FNS.

(iv) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in paragraph A(11) of these principles.

(v) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by FNS.

(14) *Capital expenditures.* The cost, net of any credits, of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets, and/or of nonexpendable personal property, having a useful life of more than one year and a net acquisition costy of more than $5,000 per unit after allocation to FNS as projected for one year after purchase, is allowable when such procurement is specifically approved by FNS. No such approval shall be granted unless the State agency shall demonstrate to FNS that such a cost is:

(a) Necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein; and

(b) That procurement of such item or items has been or will be made in accordance with the standards set out in § 277.14. In no case shall such a cost become a program charge against FNS prior to approval in writing by FNS of the procurement and the cost. When assets acquired with Food Stamp funds are (i) sold, (ii) no longer available for use in a federally sponsored program, or (iii) used for purposes not authorized by FNS, FNS's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(15) *Insurance.*

(a) Cost of insurance to secure the State agency against financial losses involved in the acceptance, storage, and issuance of food coupons and ATP cards is allowable with FNS approval.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that FNS approves such cost.

(16) *Management studies.* The cost of management studies to improve the effectiveness and efficiency of program management for the Food Stamp Program is allowable. However, FNS must approve cost in excess of $2,500 for studies performed by outside consultants or agencies other than the State agency.

(17) *Preagreement costs.* Costs incurred prior to the effective date of approval of the amended indirect cost proposal or the revised Statewide cost allocation plan, whether or not they would have been allowable thereunder if incurred after such date, are allowable only when subsequently provided for in the plan or approved indirect cost proposal.

(18) *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the State agency is allowable. Prior authorization must be obtained from FNS for cost exceeding a total of $2,500.

(19) *Proposal costs.* Costs of preparing indirect cost proposals or amendments for allocating, distributing, and implementing

provisions for payment of portions of the costs of administering the Food Stamp Program by the State agency are allowable.

(20) *Cost incurred by agencies other than the State.* The cost of services provided by other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which may be centralized and includes such functions as procurement, payroll, personnel services, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service and the like. Supervision costs will not include supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in the operation of the program. In lieu of determining actual indirect cost related to a particular service performed by another agency, either of the following alternative methods may be used during the fiscal year involved and is specifically provided for in the indirect cost proposal:

(a) Standard indirect rate equal to ten percent of direct labor cost in providing the service (excluding overtime, shift or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable cost.

(b) A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated.

C. *Unallowable costs.* The following costs shall not be allowable:

(1) *Costs of determining food stamp eligibility incidental to the determination of AFDC eligibility are not chargeable to FNS.*

(2) *Bad debts.* Any losses arising from uncollectable accounts or other claims, and related costs, are unallowable.

(3) *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) *Contributions and donations.* Unallowable.

(5) *Entertainment.* Costs whose purpose is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) *Fines and penalties.* Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) *Indemnification.* The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) *Interest and other financial costs.* Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) *Losses.* Losses which could have been covered by permissible insurance are unallowable.

(12) *Underrecovery of cost under agreements.* Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

(14) Costs incurred as result of State agencies' outreach programs. This does not include costs associated with program informations activities specified in § 272.6.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982]

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

Sec.
278.1 Approval of retail food stores and wholesale food concerns.
278.2 Participation of retail food stores.
278.3 Participation of wholesale food concerns.
278.4 Procedure for redeeming coupons.
278.5 Participation of insured financial institutions.
278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.
278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.
278.8 Administrative review—retail food stores and wholesale food concerns.
278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

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EDITORIAL NOTE1: For nomenclature changes affecting Part 278, see Amdt. 216, 47 FR 23461, May 28, 1982.

EDITORIAL NOTE2: OMB control numbers relating to this Part 278 are contained in § 271.8 published at 50 FR 2660, Jan. 18, 1985.

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate in the program shall file an application as prescribed by FNS. The FNS officer in charge shall deny or approve authorization, or request more information, within 30 days of receipt of the application.

(b) *Determination of authorization.* An applicant shall provide sufficient data on the nature and scope of the firm's business for the FNS officer in charge to determine whether the applicant's participation will further the purposes of the program. In making this determination the FNS officer in charge shall consider all of the following:

(1) *The nature and extent of the food business conducted by the applicant.* (i) Retail food stores which sell primarily food for home preparation and consumption and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of eligible food sales shall normally be considered to have food business of a nature and extent which will further the purposes of the program. These stores shall include: Full-line grocery stores; convenience stores; stores which sell meat, poultry, or, fish; stands which sell agricultural commodities; farmers markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the state and locality in which they are operating.

(ii) Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than 50 percent of eligible food sales, shall normally be considered to have food business of a nature and extent which will qualify the store for participation in the program. In determining whether a store's staple food business is sufficient for the store to qualify for participation in the program, the FNS officer in charge shall also consider:

(A) The volume of staple food business the store does;

(B) The amount of sales of staple foods compared to other business conducted by the firm; and

(C) The availability of other authorized food stores in the area.

(iii) Wholesale food concerns whose primary business is the sale of eligible food at wholesale, and in which one or more staple food items, as defined in § 271.2, make up more than 50 percent of eligible food sales, shall normally be considered to have adequate food business for the purposes of the program.

(iv) A firm whose primary business is the sale of food at the wholesale level may not be authorized as a retail firm unless it has a significant volume of retail food sales. In addition to criteria applicable to all retail firms, the FNS officer in charge shall consider all of the following factors in determining whether a wholesaler qualifies to be authorized as a retailer: the volume of the firm's retail food business in relation to the volume of its wholesale food business, whether the firm holds itself out to the public as a food retailer, and whether the firm actively seeks retail food trade. The absence or presence of any one of the factors listed in this paragraph will not necessarily determine whether a wholesale firm qualifies for authorization as a retail food store. In determining whether a wholesale firm qualifies for authorization as a retailer, FNS shall consider each unit of a multi-unit firm separately. A firm authorized under this paragraph may not accept coupons as a wholesale food concern.

(2) *The volume of coupon business which FNS may reasonably expect the firm to do.* The FNS officer in charge may consider such factors as the location of a store and previous food sales volumes in evaluating the ability of an applicant firm to attract food stamp business.

(3) *The business integrity and reputation of the applicant.* The FNS officer in charge may consider:

(i) Criminal conviction records reflecting on the honesty or integrity of officers or managers of the applicant firm;

(ii) Official records of removal from other Federal, State, or local programs;

(iii) Judicial determinations in civil litigation adversely reflecting on the integrity of officers or managers of the applicant firm;

(iv) Evidence of an attempt to circumvent a period of disqualification from the food stamp program or a civil money penalty imposed for violations of the Food Stamp Act and this part;

(v) Evidence of prior fraudulent behavior of officers, managers or employees of the applicant firm; and

(vi) Any other evidence reflecting on the business integrity and reputation of the applicant.

(4) *Bonding for firms with previous sanctions.* (i) If the applicant firm has been sanctioned for violations of this part, by withdrawal or disqualification from program participation, or by a civil money penalty, the FNS officer-in-charge shall, as a condition of future authorization, require the applicant to present a collateral bond which:

(A) Is issued by a bonding agent recognized under the law of the State in which the applicant is conducting business, and which is represented by a negotiable certificate only.

(B) Is payable to the Food and Nutrition Service, U.S. Department of Agriculture;

(C) Cannot be canceled by the bonding agent for non-payment of the premium by the applicant;

(D) Has a face value of $1,000 or an amount equal to ten percent of the average monthly coupon redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the bond, whichever amount is greater;

(E) Is valid at all times during which the firm is authorized to participate in the program; and

(F) Remains in the custody of the officer-in-charge unless released to the applicant as a result of the withdrawal of the applicant's authorization, without a fiscal claim established against the applicant by FNS.

(ii) Furnishing a collateral bond shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FNS prior to the time the bond was required by FNS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FNS as required, any subsequent fiscal claim asserted by FNS. In such cases a collateral bond shall be furnished to FNS with the payment, or a schedule of intended payments, of the civil money penalty.

(5) *Other factors.* Any other factors which the FNS officer in charge considers pertinent to the application under consideration.

(c) *Wholesalers.* A wholesale food concern may be authorized to accept coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet:

(1) For one or more specified authorized drug addict or alcoholic treatment programs, (2) for one or more specified authorized group living arrangements, (3) for one or more specified authorized shelters for battered women and children, (4) for one or more specified authorized nonprofit cooperative food-purchasing ventures, or (5) for one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons. No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

(d) *Meal services.* A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a senior citizens' center or apartment building occupied primarily by elderly persons and SSI recipients, and their spouses; or

(3) It is a private establishment operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to elderly persons and SSI recipients (and, in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. The contracts of private establishments must specify the approximate prices which will be charged.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their participants shall in addition to meeting the requirements of paragraphs (a), (b) and (d)(1) of this section, be certified by the agency or agencies of the State designated by the Governor as responsible for the State's programs for alcoholics and drug addicts under Pub. L. 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970," and Pub. L. 92-255, "Drug Abuse Office and Treatment Act of 1972," as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics. If an alcoholic treatment and rehabilitation program is located on an Indian reservation and the State does not certify or license reservation-based centers, approval to participate may be granted if the requirements of paragraphs (a), (b), and (d)(1) of this section are met and the program either is funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) pursuant to Pub. L. 91-616, or was so funded and has subsequently been transferred to Indian Health Service (IHS) funding. In addition, the certification must show that the treatment program meets the standards required of treatment programs under the supervision of the agency or agencies of the State designated by the Governor as responsible for the State's programs for alcoholics and drug addicts. Approval to participate is automatically cancelled at any time that a program loses its certification from the responsible agency or agencies of the State.

(f) *Group living arrangements.* FNS shall authorize as retail food stores those group living arrangements wishing to redeem coupons directly through wholesalers. The group living arrangement must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(g) *Shelters for battered women and children.* FNS shall authorize as retail food stores those shelters for battered women and children wishing to redeem coupons directly through wholesalers. The shelter must be public or private nonprofit, as defined in paragraph (d)(1) of this section, and meet the requirements of paragraphs (a) and (b) of this section. Shelters which also serve other groups of individuals must have a portion of the facility set aside on a long-term basis to shelter battered women and children. Also required is that the shelter be a residence which serves meals or provides food to its residents.

(h) *House-to-house trade routes.* FNS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FNS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FNS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route does and the availability of alternate sources of comparable food. An FNS official shall inspect any appliant trade route's vehicle to ensure that the trade route is a retail food store before authorizing it to accept coupons. An FNS official may require, as a condition of continuing authorization, that the trade route vehicle be reinspected semiannually to ensure that it continues to be a retail food store.

(i) *Authorization card.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be retained by the firm until superseded, surrendered, or revoked as provided in this part.

(j) *Denying authorization.* FNS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraphs (b), (c), (d), and (e) of this section; or

(2) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7. The FNS officer in charge shall issue a notice to the firm by certified mail or personal service of any authorization denial and shall advise the firm that it may request review of that determination.

(k) *Withdrawing authorization.* FNS shall withdraw the authorization of any firm authorized to participate in the program if it determines that the firm's continued participation will not further the purposes of the program, or the firm fails to meet the specifications of paragraph (b), (c), (d), or (e) of this section, or that the firm has been found to be circumventing a periods of disqualification or a civil money penalty through a purported transfer or ownership. The FNS Officer in Charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

(l) *Refusal to accept correspondence or to respond to inquiries.* FNS may withdraw the authorization of any firm which:

(1) Refuses to accept correspondence from FNS;

(2) Fails to respond to inquiries from FNS within a reasonable time; or

(3) Cannot be located by FNS with reasonable effort.

(m) *Updating information.* FNS may require, from time to time, but not more than once each Federal fiscal year, a firm to update any or all of the information on the firm's application form. Failure to provide this information may result in the withdrawal of the firm's approval to participate in the program.

(n) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial or withdrawal of approval to participate in the program and may subject the firm and persons responsible to civil or criminal action.

(o) *Administrative review.* Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under § 278.8.

(p) *Safeguarding privacy.* The contents of applications or other information furnished by firms, including information on their gross sales and food sales volumes and their redemptions of coupons, may not be used or disclosed to anyone except for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations. Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law.

(q) Each authorized retail food store shall post in a suitable and conspicuous location in the store a sign designed and provided by FNS which provides information on how persons may report abuses they have observed in the operation of the program. Refusal or repeated failure to display such a sign by an authorized retail food store may result in the withdrawal of the firm's approval to participate in the program.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 278.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

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§ 278.2 Participation of retail food stores.

(a) *Use of coupons.* Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under paragraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store.

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. No retail food store may single out coupon users for special treatment in any way.

(c) *Accepting coupons.* No authorized retail food store may accept coupons marked "paid," "canceled," or "specimen." Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. It is the right of the household member or the authorized representative to detach the coupons from the book.

(d) *Making change.* An authorized retail food store shall use, for the purpose of making change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1-dollar is required, the eligible household shall receive the change in cash. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retail food store may not engage in a series of coupon transactions the purpose of which is to provide the same food stamp customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(e) *Accepting coupons before delivery.* Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 14 days from the day the cooperative receives the member's coupons.

(f) *Paying credit accounts.* Coupons may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit.

(g) *Redeeming coupons.* Authorized retail food stores may exchange coupons in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children shall not present coupons directly to an insured financial institution for redemption.

(h) *Identifying coupon users.* Coupons may not knowingly be accepted from persons who have no right to possession of coupons. If a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the food retailer should request the person to show the ID card of the household to establish the right of that person to use the coupons. Where photo ID cards are in use, the person presenting the ID card need not be pictured on the card.

(i) *Checking meal delivery service recipients.* A nonprofit meal delivery service shall require the recipient of a delivered meal to show the marked ID card establishing the recipient's right to use coupons for that service the first time that the recipient offers coupons in payment for the service, and shall request the marked ID card at any time the nonprofit meal delivery service has cause to question the continued eligibility of the recipient to use coupons for delivered meals.

(j) *Checking hunting and fishing equipment users.* Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

(k) *Checking participants in restaurants.* A restaurant operating under a State contract shall require a household purchasing meals to show the marked ID card establishing the household's right to purchase meals with coupons unless the personnel of the restaurant know that the program participant tendering coupons is eligible to use coupons to purchase meals.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended at Amdt. 191, 46 FR 50277, Oct. 9, 1981; Amdt. 205, 46 FR 60167, Dec. 8, 1981; Amdt. 257, 49 FR 32538, Aug. 15, 1984]

§ 278.3 Participation of wholesale food concerns.

(a) *Accepting coupons.* An authorized wholesale food concern may accept endorsed coupons from one or more specified authorized retail food stores, from one or more specified authorized nonprofit cooperative food-purchasing ventures, from one or more specified authorized group living arrangements, from one or more specified authorized drug addict or alcoholic treatment programs, or from one or more specified authorized shelters for battered women and children if the coupons are accompanied by a properly filled-out and signed redemption certificate, and are not marked "paid," "canceled," or "specimen." A wholesaler authorized to accept coupons from an authorized drug addict or alcoholic treatment program, or from an authorized group living arrangment, or from an authorized shelter for battered women and children, may accept coupons from that treatment program, or group living arrangement, or shelter for battered women and children, only in exchange for food.

(b) *Accepting legally obtained coupons.* No authorized wholesale food concern may accept coupons if the wholesaler knows or has reasonable cause to believe that the coupons were not legally obtained for eligible food.

(c) *Redeeming coupons.* An authorized wholesale food concern may redeem coupons, properly accepted from retailers, through the banking system, upon presentation of the coupons with:

(1) The authorized retail food store's properly filled-out and signed redemption certificate for the coupons; and

(2) The authorized wholesale food concern's properly filled-out and signed redemption certificate.

(d) *Handling retailer redemption certificates.* No authorized wholesale food concern may alter, prepare, or complete an authorized retail food store's redemption certificate.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 173, 46 FR 62810, Dec. 29, 1981]

§ 278.4 Procedure for redeeming coupons.

(a) *Coupons accepted without authorization.* Coupons accepted by a retail food store or a wholesale food concern before the receipt by the firm of an authorization card from FNS may not be presented for redemption unless the FNS officer in charge has approved the redemption under § 278.7(b). Burned or mutilated coupons shall be presented for redemption to the FNS officer in charge as provided in § 278.7(c).

(b) *Endorsing coupons.* Each authorized retail food store or authorized wholesale food concern shall mark its authorization number or name on each coupon before it presents the coupons for redemption.

(c) *Using redemption certificates.* FNS will provide all authorized firms with redemption certificates. Wholesale food concerns and retail food stores, except for drug addict and alcoholic treatment and rehabilitation programs, shall use the redemption certificates to present coupons to insured financial institutions for credit or for cash. All retail food stores which wish to redeem coupons at wholesale food concerns shall use the redemption certificates for that purpose. An authorized retail firm using redemption certificates to redeem coupons shall fill out the redemption certificate to show the value of the coupons redeemed, the name of the insured financial institution or wholesaler, the date, and the signature and title of the official of the firm redeeming coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

§ 278.5 Participation of insured financial institutions.

(a) *Accepting coupons.* (1) Financial institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) may redeem coupons only from authorized retail food stores, meal services, and wholesale food concerns in accordance with the rules contained in this Part and instructions of the Federal Reserve Banks. Coupons submitted to insured financial institutions for credit or cash must be properly endorsed in accordance with § 278.4 of this part and shall be accompanied by a properly completed and signed redemption certificate.

(2) An insured financial institution shall verify the amount of the coupons being redeemed by recording its count on the redemption certificate. The count may either be encoded to permit Magnetic Ink Character Recognition (MICR) or handwritten. However, financial institutions are encouraged to MICR encode the count. Redemption certificates accepted by insured financial institutions shall be forwarded, with the corresponding coupon deposits, to the Federal Reserve Bank along with the transmitting Food Coupon Deposit Document (Form FNS-521).

(3) Redeemed coupons must be indelibly cancelled on the face of the coupon by the first insured financial institution receiving them. If the cancellation on the coupon face does not show the depositing institution's name or its routing symbol transit number, this identifying information must appear on the straps affixed to each bundle of coupons of like denomination. Deposits not meeting these cancellation requirements may be returned to the depositing institution for reprocessing. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed.

(4) Insured financial institutions which are members of the Federal Reserve System, insured nonmember clearing institutions, and insured nonmember institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member institution on the books of a Federal Reserve Bank may forward coupons directly to the Federal Reserve Bank. Other insured financial institutions may forward cancelled coupons through ordinary collection channels.

(b) *Role of Federal Reserve Banks.* Federal Reserve Banks, acting as fiscal agents of the United States, will receive canceled coupons for collection as cash items from armed forces installations, member insured financial institutions of the Federal Reserve System, nonmember clearing insured financial institutions, and nonmember insured financial institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member insured financial institution on the books of the Federal Reserve Bank, and will charge those items to the general account of the Treasurer of the United States.

(c) *FNS liability for losses.* FNS shall not be liable for the value of any coupons lost, stolen, or destroyed while in the custody of an insured financial institution or for the value of coupons lost, stolen, or destroyed while in transit from an insured financial institution to a Federal Reserve Bank.

(d) *FNS use of coupons to detect violations.* Regardless of any other provision in these regulations, coupons may be issued to, purchased by, or redeemed by persons authorized by FNS to use those coupons in examining and inspecting program operations, and for other purposes determined by FNS to be required for proper administration of the program. Coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (g) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of this subchapter or of any applicable statute, shall at the request of FNS and on issuance of a receipt for them be turned over to FNS by the insured financial institution receiving the coupons, or by any other person to whom the request is addressed, together with any certificate(s) of redemption accompanying the coupons. Any coupons so requested shall not be eligible for redemption through Federal Reserve Banks or other collection channels. However, FNS may redeem coupons from any insured financial institution or person by payment of the face amount of the coupons upon determination by FNS that this direct redemption of coupons is warranted. FNS shall determine the proper disposition of any coupons held by FNS on completion of the examination or inspection in which the coupons were used. Claims or demands for unredeemed coupons surrendered to FNS may be mailed to the local FNS field office for the project area involved.

(e) *Selling coupons to stores for internal checks.* FNS may sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of coupon transactions. The retail food store must submit a written request to FNS which shall include a certification that the store recognizes that its use of coupons will not affect FNS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods. The request shall also include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct checks of the store's employees using coupons. The request shall be directed to the Federal Operations Division, FNS, U.S. Department of Agriculture, Washington, DC 20250, and shall be accompanied by a check or money order made payable to the Food and Nutrition Service to cover the face value cost of the coupons requested. Coupons bought by retail food stores for use in internal checks may be later redeemed for full value in accordance with § 278.4, and in redeeming those coupons, retail food stores are authorized to make the certification required for redemption.

(f) *Continued participation of households under investigation.* Upon the written request of Federal, State, or local government agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes concerning the enforcement of the Food Stamp Act or the regulations, the State agency may allow ineligible households to continue program participation. The State agency may allow the households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after the request is received or any longer period which FNS, upon request of the State agency, may approve in a particular case, or (2) receipt of notification from the investigative agency that participation may be terminated or that the investigation has been completed. Regardless of any other provision of these regulations, FNS may not hold the State agency liable for the value of any coupons issued to households under this paragraph.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 257, 49 FR 32538, Aug. 15, 1984]

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act or this part. Disqualification shall be for from 6 months to 5 years for the firm's first sanction; for from 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a firm's third sanction or a disqualification based on trafficking in coupons or ATP cards. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification or at any later time shall file a new application under § 278.1 of this part so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. Except in the case of a permanent disqualification, FNS may, in lieu of a disqualification, subject the firm to a civil money penalty of up to $10,000 for each violation if FNS determines that a disqualification would cause hardship to participating households.

(b) *Charge letter.* Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before the determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the officer in charge of the FNS field office which has responsibility for the project area in which the firm is located.

(c) *Review of evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination.

(d) *Basis for determination.* The FNS regional office making a disqualification or penalty determination shall consider: (1) The nature and scope of the violations committed by personnel of the firm, (2) any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm's intent to violate the regulations.

(e) *Penalties.* FNS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered sanctions for such purposes. The FNS regional office shall:

(1) Disqualify a firm permanently if:

(i) Personnel of the firm have trafficked in coupons or ATP cards; or

(ii) Violations such as, but not limited to, the sale of ineligible items occurred and the firm had twice before been sanctioned.

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:

(i) It is the firm's practice to sell expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for food coupons; or

(ii) The firm's coupon redemptions for a specified period of time exceed its food sales for the same period of time; or

(iii) A wholesale food concern's redemptions of coupons for a specified period of time exceed the redemptions of all the specified authorized retail food stores, nonprofit cooperative food-purchasing ventures, group living arrangements, drug addict and alcoholic treatment programs, and shelters for battered women and children which the wholesale food concern was authorized to serve during that time; or

(iv) A wholesale food concern's stated redemptions of coupons for a particular retail food store, nonprofit cooperative food-purchasing venture, group living arrangement, drug addict and alcoholic treatment program, or shelters for battered women and children exceeded the actual amount of coupons which that firm or organization redeemed through the wholesaler; or

(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(i) It is the firm's pactice to commit violations such as the sale of common nonfood items in amounts normally found in a shopping basket and the firm was previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) Any of the situations described in paragraph (e)(2) of this section occurred and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iii) The firm is an authorized communal dining facility, drug addiction or alcoholic treatment and rehabilitation program, group living arrangement, meal delivery service, or shelter for battered women and children and it is the firm's practice to sell meals in exchange for food coupons to persons not eligible to purchase meals with food coupons and the firm has been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iv) A wholesale food concern accepted coupons from an authorized firm which it was not authorized to serve and the wholesale food concern had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations; or

(v) The firm is an authorized retail food store and personnel of the firm have engaged in food coupon transactions with other authorized retail stores, not including treatment programs, group living arrangements or shelters for battered women and children, and the firm had been previously advised of the possibility that violations were occuring and of the possible consequences of violating the regulations.

(4) Disqualify the firm for 1 year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.

(f) *Criteria for civil money penalty.* FNS may impose a civil money penalty as a sanction in lieu of disqualification only when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction. A civil money penalty may not be imposed in lieu of a permanent disqualification.

(g) *Amount of civil money penalty.* FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed $10,000 for each violation.

(h) *Notifying the firm of civil money penalty.* A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty, or to notify the regional office in writing of its intent to pay in installments as specified by the regional office. The firm must present to FNS a collateral bond as specified in § 278.1(b)(4), within the same 15-day period. The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified. FNS shall:

(1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;

(2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FNS regional office; or

(3) Disqualify the firm for the prescribed period if the firm does not present a collateral bond within the required 15 days. Any payment on a civil money penalty which have been received by FNS shall be returned to the firm. If the firm presents the required bond during the disqualification period, the civil money penalty may be reinstated for the duration of the disqualification period.

(i) *Review of determination.* The determination of the FNS regional office shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in § 279.5.

(j) *Delivery of notice.* The delivery by certified mail or personal service of any notice required of FNS by this part will constitute notice to the addressee of its contents.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 236, 47 FR 56471, Dec. 17, 1982; Amdt. 236, 49 FR 22057, May 25, 1984; Amdt. 258, 49 FR 28393, July 12, 1984]

§ 278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

(a) *Claims against violators.* FNS may establish and pursue claims against firms or other entities which have accepted or redeemed coupons in violation of the Food Stamp Act or this part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FNS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of § 278.1(b)(4). FNS shall deny an application for authorization or reauthorization by a firm which has failed to pay a claim.

(b) *Forfeiture of a collateral bond.* If FNS establishes a claim against an authorized firm which has previously been sanctioned, collection of the claim may be through total or partial forfeiture of the collateral bond. If FNS determines that forfeiture is required for collection of the claim, FNS shall take one or more of the following actions, as appropriate.

(1) Determine the amount of the bond to be forfeited on the basis of the loss to the Government through violations of the act, and this Part, as detailed in a letter of charges to the firm;

(2) Send written notification by certified mail-return receipt requested to the firm and the bonding agent, of FNS' determination regarding forfeiture of all or a specified part of the collateral bond, and the reasons for the forfeiture;

(3) Advise the firm and the bonding agent of the firm's right to administrative review of the claim determination;

(4) Advise the firm and the bonding agent that if payment of the current claim is not received directly from the firm, FNS shall obtain full payment through forfeiture of the bond;

(5) Proceed with collection on the bond for the amount forfeited if a rerquest for review is not filed by the firm within the period established in § 279.5, or if such review is unsuccessful; and

(6) Upon the expiration of time permitted for the filing of a request for administratve and/or judicial review, deposit the bond in a Federal Reserve Bank account or in the Treasury Account, General. If FNS requires only a portion of the face value of the bond to satisfy a claim, the entire bond will be negotiated, and the remaining amount returned to the firm.

(c) *Coupons accepted without authorization.* (1) The FNS officer in charge may approve the redemption under § 278.4 of coupons accepted by firms before the receipt of an authorization card from FNS if the following conditions exist:

(i) The coupons were received in accordance with the requirements of this part governing acceptance of coupons except the requirement that the firm be authorized before acceptance;

(ii) The coupons were accepted by the firm in good faith, and without intent to circumvent this part; and

(iii) The firm receives authorization to participate in the program.

(2) Firms seeking approval to redeem coupons accepted without authorization shall present a written application for approval to the local FNS field office. This application shall be accompanied by a written statement signed by the firm of all the facts about the acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent this part.

(d) *Burned or mutilated coupons.* FNS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FNS field office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an estimate of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase "Deputy Administrator for Fiscal Management, FNS, USDA," should be entered in the section of the redemption certificate for entering the name and address of the insured financial institution or wholesaler.

(e) *Old series coupons.* FNS may redeem the old series food coupons issued in 50-cent, 2-dollar, and 5-dollar denominations when they are presented for redemption. Firms presenting the coupons for redemption shall submit the coupons to the local FNS field office with a properly completed redemption certificate and a written statement, signed by a representative of the firm, detailing the circumstances of the acceptance of the coupons.

(f) *Denials of claims brought by authorized firms against FNS.* If a claim brought by a firm against FNS under this section is denied in whole or in part, notification of this action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by this action, it may seek administrative review as provided in § 278.8.

(g) *Lost or stolen coupons.* FNS may not be held liable for claims from retail food stores, meal services, or wholesale food concerns for lost or stolen coupons.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 258, 49 FR 28393, July

12, 1984; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or wholesaler aggrieved by administrative action under §§ 278.1, 278.6 or 278.7 may, within the period stated in § 279.5, file a written request for review of the administrative action with the review officer. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer. A disqualification for failure to pay a civil money penalty shall not be subject to an administrative review.

(b) *Addressing the request.* The request for review shall be filed with the Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, Room 304, 3101 Park Center Drive, Alexandria, Virginia 22302.

(c) *Review procedure.* The procedure for food stamp reviews in published in Part 279 and is available upon request from the Director, Administrative Review Division.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 236, 49 FR 22058, May 25, 1984]

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

(a) *Amendment 224.* Retail food stores shall have signs posted as required by this amendment no later than 30 days after distribution of the signs by FNS.

(b) *Amendment 257.* With the exception of the provisions in § 278.5 requiring redeeming financial institutions to verify that coupons are supported by redemption certificates, the revisions to Part 278 shall be effective September 14, 1984. Redeeming financial institutions shall begin verifying coupon deposits as required by § 278.5 in accordance with the schedule determined by the Federal Reserve Board. Insured financial institutions shall adhere to preexisting requirements for handling redemption certificates (at 7 CFR 278.5(a)) until their Federal Reserve District implements the procedures contained in this final rule. FNS shall not be liable for any losses of coupons in transit to Federal Reserve Banks or as a result of a burglary or robbery of an insured financial institution which occur after September 14, 1984.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 224, 48 FR 43292, Sept. 23, 1983, as amended by Amdt. 257, 49 FR 32538, Aug. 15, 1984]

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

Subpart A—Administrative Review—General

Sec.
279.1 Scope and purpose.
279.2 Food stamp review officer.
279.3 Authority and jurisdiction.
279.4. Rules of procedure.

Subpart B—Rules of Procedure

279.5 Manner of filing requests for review.
279.6 Content of request for review.
279.7 Action upon receipt of a request for review.
279.8 Determination of the food stamp review officer.
279.9 Legal advice and extensions of time.

Subpart C—Judicial Review

279.10 Judicial review.
279.11 Implementation of amendments relating to administrative and judicial review.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027), unless otherwise noted.

SOURCE: Amdt. 136, 43 FR 43279, Sept. 22, 1978, unless otherwise noted.

Subpart A—Administrative Review—General

§ 279.1 Scope and purpose.

Subpart A sets forth the procedure for the designation of the food stamp review officers and the authority and jurisdiction of those officers. Subpart B states the rules of procedure to be followed in the filing and disposition of the requests for review provided for in § 278.8. Subpart C concerns the rights of food retailers and food wholesalers to judicial review of the final determinations of the food stamp review officer.

§ 279.2 Food stamp review officer.

(a) *Designation of review officers.* The Administrator, FNS, shall designate one or more persons to act as food stamp review officers.

(b) *Assigning cases to review officers.* The officers shall serve for periods which the Administrator, FNS, shall determine. Changes in designations and additional designations may be made from time to time at the discretion of the Administrator, FNS. When more than one food stamp review officer has been designated, requests for review will be assigned for handling to individual food stamp review officers by a person designated by the Administrator, FNS. The names of the food stamp review officers shall be on file in the Office of the Administrator, FNS.

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* A food stamp review officer shall act for the Department on requests for review filed by firms aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under § 278.1;

(2) Disqualification from participation in the program or imposition of a civil money penalty under § 278.6;

(3) Denial of all or part of any claim asserted by a firm against FNS under § 278.7 (c), (d), or (e);

(4) Assertion of a claim under § 278.7(a); or

(5) Forfeiture of part or all of a collateral bond under § 278.1, if the request for review is made by the authorized firm. The food stamp review officer shall not accept requests for review made by a bonding company or agent.

(b) *Authority.* The determination of the food stamp review officer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and Subpart C of this part.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 258, 49 FR 28393, July 12, 1984; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

§ 279.4 Rules of procedure.

Rules of procedure for the orderly filing and disposition of requests for review of firms submitted in accordance with § 279.5 are issued in Subpart B of this part. The Administrator, FNS, may later issue amendments to any rules of procedure which are appropriate.

Subpart B—Rules of Procedure

§ 279.5 Manner of filing requests for review.

(a) *Addressing requests for review.* Requests for review submitted by firms shall be mailed to or filed with Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, Room 304, 3101 Park Center Drive, Alexandria, Virginia 22302.

(b) *Content of requests.* Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

(c) *Time limit for requesting review.* A request for review shall be filed with the Director, Administrative Review Division, within 10 days of the date of delivery of the notice of the action for which review is requested. For purposes of determining whether a filing date is timely:

(1) The filing date shall be the postmark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the 10 day period, the day of delivery of the notice of the action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, "legal holiday" in-

cludes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or the Congress of the United States.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984]

§ 279.6 Content of request for review.

(a) *Identifying the request.* Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, a civil money penalty, or a denial of all or any part of a claim.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the review officer shall notify the firm of the date by which the information must be filed. The firm requesting review may ask for an opportunity to appear before the review officer in person. However, any information submitted in person shall, if directed by the review officer, be put in writing by the firm and filed with the review officer within a period which the review officer shall specify.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984]

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of administrative action, the review officer shall notify the appropriate FNS regional office, in writing, of the action under review, and shall direct that the administrative action be held in abeyance until the review officer has made a determination. If the administrative action in question involves a denial of approval of an application to participate in the program, a denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond, the review officer shall direct that the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture, until the review officer has made a determination. In any case, notice to the appropriate FNS regional office shall be accompanied by a copy of the request filed by the firm.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the food stamp review officer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS regional office shall be final.

(c) *Failure to meet with review officer.* If the firm filing the request for review asks to appear before the food stamp review officer in person, the review officer shall promptly notify the firm of the date, time and place set for the appearance. If the firm fails to appear before the food stamp review officer as specified, any written information timely submitted in accordance with this section shall be considered to be the only information submitted by the firm.

(d) *Basis for regional office determination.* The food stamp review officer shall require the appropriate FNS regional office to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22059, May 25, 1984; Amdt. 258, 49 FR 28393, July 12, 1984; 49 FR 29769, July 24, 1984]

§ 279.8 Determination of the food stamp review officer.

(a) *Basis for review officer determination.* The food stamp review officer shall make a determination based upon:

(1) The information submitted by the FNS regional office;

(2) Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the review officer from any other person having relevant information.

(b) *Review of denial of application or withdrawal of approval.* In the case of a request for review of a denial of an application or withdrawal of approval to participate in the program, the determination of the food stamp review officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) *Review of disqualification or civil money penalty.* In the case of a request for review of action disqualifying a firm from participation in the program or assessing a civil money penalty against the firm, the determination of the food stamp review officer shall sustain the action under review or specify a shorter period of disqualification or a reduced civil money penalty, direct that an official warning letter be issued to the firm in lieu of any period of disqualification or civil money penalty, or direct that no administrative action be taken. The food stamp review officer may change a disqualification of a firm selling a substantial variety of staple foods to a civil money penalty if the review officer receives information that the disqualification would cause a hardship to participating households because there are no other firms in the area selling as large a variety of staple food items at comparable prices, and this information was not available to the regional office when the regional office made its determination to disqualify the firm. In such a case, the food stamp review officer, before he/she makes a determination, shall provide the information to the regional office, which shall report to the food stamp review officer whether the new information warrants a civil money penalty in lieu of disqualification. If the food stamp review officer determines that a civil money penalty in lieu of a disqualification is warranted, the review officer shall determine the amount of the penalty in accordance with § 278.6.

(d) *Review of denial of claim.* In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the food stamp review officer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) *Notice of review officer determination.* The food stamp review officer shall notify the firm of the determination by certified mail. The notification shall be sent to the representative of the firm who filed the request for review.

(f) *Notifying the regional office.* The food stamp review officer shall send a copy of the notification to the firm to the appropriate FNS regional office, which shall take any action which may be necessary to comply with the determination of the review officer.

(g) *Effective date.* The determination of the food stamp review officer shall take effect 30 days after the date of delivery of the determination to the firm.

§ 279.9 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the food stamp review officer shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the food stamp review officer by the firm requesting the review, the food stamp review officer may grant extensions of time if, in the review officer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

Subpart C—Judicial Review

§ 279.10 Judicial review.

(a) *Filing for judicial review.* A firm aggrieved by the determination of the food stamp review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the food stamp review officer in accordance with § 279.8(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the officer or agency whose order is being attacked shall be sent by registered or certified mail to the person in charge of the applicable regional office of FNS.

(c) *Trial de novo.* The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action.* Pending the judicial review, or any appeal from the judicial review, the administrative action under review shall remain in force, unless the firm makes application to the court and, after a hearing on the action showing irreparable injury, the court temporarily stays the administrative action under review pending disposition of the de novo trial or an appeal from the trial.

§ 279.11 Implementation of amendments relating to administrative and judicial review.

Amendment No. 257. The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(91 Stat. 958 (7. U.S.C. 2011-2029))

[Amdt. 257, 49 FR 32539, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984]

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

AUTHORITY: Pub. L. 95-113, 91 Stat. 958 (7 U.S.C. 2011-2027); Pub. L. 93-288, 88 Stat. 143.

EDITORIAL NOTE: OMB control numbers relating to this Part 280 are contained in § 271.8 published at 50 FR 2660, Jan. 18, 1985.

§ 280.1 Interim disaster procedures.

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of Title 5 of the United States Code.

[Amdt. 192, 46 FR 8922, Jan. 27, 1981]

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

Sec.

281.1 General purpose and scope.
281.2 Administration.
281.3 Determination of failure.
281.4 Determining Indian tribal organization capability.
281. 5 Responsibilities of an Indian tribal organization designated as State agency.

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Sec.
281.6 Liabilities and sanctions.
281.7 Indian tribal organization failure.
281.8 Transfer of program administration.
281.9 Funding.
281.10 Appeals.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

SOURCE: 44 FR 35925, June 19, 1979, unless otherwise noted.

§ 281.1 General purpose and scope.

(a) These regulations govern the operation of the Food Stamp Program on Indian reservations either separately or concurrently with the Food distribution program. In order to assure that the Food Stamp Program is responsive to the needs of Indians on reservations, State agencies are required to consult with Indian tribal organizations about the implementation and operation of the Food Stamp Program on reservations. Also, under certain specified conditions Indian tribal organizations on reservations can administer the Food Stamp Program. The Act authorizes the Secretary to pay such amounts for administrative costs as are determined to be necessary for the effective operation of the Food Stamp Program on Indian reservations.

(b) The operation of the Food stamp Program on Indian reservations is governed by all of the terms and conditions set forth in the Food Stamp Act of 1977 as amended and the regulations of this chapter.

(c) Additionally, under no circumstances shall any household participate simultaneously in the Food Stamp Program and the Food Distribution Program. Policy governing this prohibition is found in § 283.7(e).

§ 281.2 Administration.

(a) *Qualification.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FNS determines that such area(s) does not qualify as a reservation, as that term is defined in these regulations. For purposes of this part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FNS:

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this part, must show to FNS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians.

(ii) A clear and precise description of the boundaries of such geographic area(s).

(3) Otherwise qualified areas for which the responsible ITO has requested operation of the Food Distribution Program alone in accordance with § 283.4, rather than concurrent operation with the Food Stamp Program, shall be exempt from the requirements of this part, and shall not be considered food stamp areas for any other purposes of this subchapter. Indian tribal households (households in which at least one adult member is recognized by the appropriate ITO as a tribal member) resident in these areas shall be ineligible for food stamp benefits. However, non-Indian tribal households resident in these areas may apply and be certified for food stamps at the State agency's certification office which would otherwise service the area. Otherwise qualified areas for which the responsible ITO has requested operation of the food distribution Program concurrently with the Food Stamp Program or areas within the reservation where FNS has determined that concurrent operation is necessary in accordance with § 283.3(b)(2) shall be subject to all requirements of this part and subchapter.

(b) *State plan.* In addition to the public comment requirements in § 272.2, the State agency shall submit for comment its service plans, and all other portions of the State plan that directly pertains to the operation of the Program for residents on the reservation to the responsible ITO for reservations that qualify under paragraph (a) of this section. The ITO shall have 30 days to provide comments in writing to the State agency. The State agency shall, if appropriate and to the extent practicable, incorporate into its plans any suggestions made by the ITO. Additionally, the State agency shall administer the Food Stamp Program in a manner that is responsive to the needs of the Indians on the reservation, as determined by ongoing consultation with the ITO and by other means, regarding such areas of program operation as project area designation, operating procedures, locations and hours of certification and issuance, staffing and corrective action plans. The State agency shall maintain records of consultations on State plans and ongoing consultations held with ITO's for review by FNS. FNS shall study these records as part of reviews in accord with § 281.3 and Management Evaluation Reviews of the State agency.

(c) *Project area designation.* (1) An Indian reservation shall be designated as a separate project area or areas for the purpose of improving the accessibility of program services to Indians on the reservation unless:

(i) The State agency demonstrates to FNS that the size or population of the reservation does not warrant such designation;

(ii) The State agency demonstrates to FNS that the tribe can be adequately served by the existing or a planned project area because of the location of certification and issuance offices;

(iii) The State agency demonstrates to FNS that such designation would reduce the availability of certification and issuance offices; or

(iv) The State agency otherwise demonstrates to FNS that such designation would impair its Statewide administration of the Program.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and the appropriate State agencies may jointly request FNS approval that a single State agency administer the Food Stamp Program on all or part of the Indian reservation. A single agency of the State government would have to administer the Program under the same terms and conditions applied to all other political subdivisions within its jurisdiction. An ITO designated as a State agency pursuant to § 281.4(d) would have to administer the Program under the same terms and conditions on all areas of the reservation.

(d) *Contracts with an Indian tribal organization.* The State agency may contract program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials on issuance. The State agency may also use the ITO in prescreening, translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations. In all cases, the State agency shall retain full responsibility for program administration.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[44 FR 35925, June 19, 1979, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982]

§ 281.3 Determination of failure.

(a) *Request for determination of State government agency failure.* FNS shall examine State agency adminstration of the Food Stamp Program on all or part of a reservation when requested by the ITO, the State agency or at FNS' discretion. When FNS determines that a deficiency in a State agency operation of the Food Stamp Program on all or part of an Indian reservation may be serious enough to warrant a review, FNS shall advise the State agency and the ITO in writing of the alleged deficiencies and of its plans to conduct the review and document deficiencies, if any are found. Subsequent to October 1, 1979 FNS shall complete these reviews within 90 days from receipt of an ITO's or State agency's request except under unusual circumstances such as the receipt of a large number of simultaneous requests.

(b) *Review*—(1) *Content of the review for State agency performance.* The review shall be designed to determine whether or not the State agency is properly administering the Food Stamp Program on a specific reservation. When an agency of State government is administering the Program on a reservation, FNS shall as a part of the review consult with the ITO about the operation of the Program on the reservation. The review should, depending on the nature of the complaint, include but not be limited to, an analysis of some or all of the following data:

(i) The records of State agency consultation with the ITO required under § 281.2(a);

(ii) The estimated percentage of all eligible Indians on the reservation who are participating the Program;

(iii) The nature and extent of violations, if any, of the 30-day and other processing standards for Indians;

(iv) The percentage of errors made in determining eligibility and/or the amount of benefits overissued or underissued;

(v) Compliance with standards for location and hours of certification and issuance offices as required in § 272.5;

(vi) Compliance with bilingual requirements of this regulation, where appropriate;

(vii) Compliance with nondiscrimination requirements of this regulation;

(viii) Compliance with other significant program requirements;

(ix) Comparison with services provided in all other areas of the State; and

(x) Any other relevant information that becomes available during the course of reviews including information received through contacts with the Indian tribe.

(2) *Finding of no or of minor deficiencies.* If after the review FNS determines either that deficiencies do not exist or that only minor deficiencies exist, FNS shall issue a report documenting its findings to both the State agency and the ITO and shall work closely with the State agency to achieve corrective action.

(c) *Formal warning.* After the review is completed, if FNS determines that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal under Part 276. If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FNS shall notify the State, with a copy to the ITO, that the warning for those deficiences is satisfied.

(d) *Determination of failure and sanctions.* If at any time after the formal warning period, or during or after the corrective action period, FNS determines that major deficiencies still exist which the State agency has not satisfactorily addressed or is not satisfactorily addressing, FNS shall determine State failure and may impose appropriate Federal sanctions on the State agency as specified in Part 276.

(e) *ITO operations.* If FNS has determined State failure and FNS has also determined that the ITO is capable of administering a Food Stamp Program in accordance with the terms and requirements for participating State agencies as established in the Act and regulations, then the ITO shall assume adminstration of the Food Stamp Program on the reservation. The State agency shall continue to administer the Food Stamp Program on the reservation until an effective termination and transition arrangement has been completed in accordance with § 281.8.

§ 281.4 Determining Indian tribal organization capability.

(a) *Determining capability of ITO.* If the ITO wishes to administer its own Food Stamp Program on the reservation FNS shall determine the ITO's potential capability for administering the Food Stamp Program in accordance with the criteria listed in § 281.4(b). FNS shall begin to evaluate the ITO's capability for all aspects of Food Stamp Program administration, allowing for fulfillment of that potential through necessary training and technical assistance, not later than the date of the issuance of the formal warning to the State agency.

(b) *ITO responsibility.* (1) The ITO must satisfy FNS that it is capable (if provided with any needed training and technical assistance) of administering the Food Stamp Program effectively and efficiently, and of complying with all provisions of the Food Stamp Act of 1977, as amended, and the regulations of this chapter, including provisions governing quality control procedures, fraud determinations, and establishment and collection of claims for both Indian and any non-Indian participants. The ITO shall provide FNS with the following information:

(i) *Operation of government programs.* The ITO shall provide FNS a list of all government programs that the ITO administers and has recently administered. FNS may ask the ITO to provide the names of appropriate officials of the government organizations having jurisdiction over these programs so FNS can obtain all relevant audits, GAO reports, program evaluations and any other documents pertaining to the effectiveness and efficiency of tribal administration of these programs. The ITO shall also provide FNS a list of its recent contractual responsibilities, if any, for the Food Stamp Program under § 281.2(b).

(ii) *Fiscal capabilities.* The ITO shall provide FNS documentation of its bookeeping and accounting procedures, including procedures in use for fiscal accountability under Part 277 and for other government programs that the ITO administers.

(iii) *Projected certification and issuance facilities.* The ITO shall provide FNS with a description of the location of projected certification and issuance facilities.

(iv) *Fraud hearings and claims.* The ITO shall provide FNS with a description of how it will pursue fraud hearings and claims against Indian and non-Indian participants.

(v) *Staffing.* The ITO shall provide FNS with sufficient information to determine that personnel who will be used in the certification process will be employed under standards equivalent to current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under section 208 of the Intergovernmental Personnel Act of 1970.

(vi) *Civil rights assurance.* The ITO shall provide FNS an assurance that the ITO shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 99-112), section 504), and section 11(c) of the Food Stamp Act of 1977 and all pertinent regulations or directives to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be denied benefits or otherwise be subject to discrimination under the Food Stamp Program. Where appropriate, FNS shall consider the adequacy of measures taken by the ITO to ensure that there shall be no discrimination.

(2) Prior to the determination of ITO capability, FNS shall consult with other sources such as the Bureau of Indian Affairs (BIA) to obtain any information relevant to the capability determination.

(3) If it is determined by FNS, after consultation with other sources such as the BIA, that the ITO is not capable of operating an efficient and effective Food Stamp Program, the agency of the State government shall continue to operate the Program on the reservation in accordance with § 281.3.

(c) *Training and technical assistance.* Upon determining that the State agency has failed to properly administer the Food Stamp Program and that the ITO is potentially capable of operating an effective and efficient Food Stamp Program, FNS shall determine, based on information provided by the ITO and other sources such as BIA, the training and technical assistance which is necessary to assure efficient and effective program administration. FNS will assure that appropriate training and technical assistance is provided as expeditiously as possible prior to the ITO's assumption of the administration of the Food Stamp Program.

(d) *Assumption of duties.* When FNS is satisfied that the ITO has successfully completed (c) of this section, FNS shall designate the ITO as a State agency, contingent on the following:

(1) *State plans.* The ITO shall prepare and submit to FNS a Plan of Operation as provided in § 272.2. In completing the Plan of Operation the ITO

shall affirm that it will comply with the Civil Rights assurances detailed in (b)(1)(vi) of this section.

(2) *Proposed budget.* As part of the Plan of Operation, the ITO shall annually submit to FNS a proposed statement which shall provide a summary of program information and amounts budgeted to carry out the various program functions. This information shall be submitted to FNS for approval prior to the commitment of any Federal funds for administrative costs for that year. FNS shall provide the ITO any technical assistance which is necessary to prepare this information.

(3) *Termination and transition arrangement.* An effective termination and transition arrangement shall be established as required in § 281.8.

§ 281.5 Responsibilities of an Indian tribal organization designated as State agency.

An ITO administering the Food Stamp Program on a reservation shall adhere to the Food Stamp Act of 1977, all subsequent amendments, and all regulations issued pursuant to that law in the same manner as any other State agency. The ITO may contract certain administrative functions to private organizations as provided in Parts 274 and 277. The ITO may not, however, contract responsibility for certification activities such as interviews or eligibility determinations. The ITO shall retain full responsibility for program administration.

§ 281.6 Liabilities and sanctions.

An ITO administering the Food Stamp Program on a reservation is subject to the same liabilities and Federal sanctions as is any other State agency. FNS shall monitor administration of the Program and conduct reviews through the Performance Reporting System described in Part 275. When necessary, warning procedures and other Federal sanctions prescribed in Part 276 will be implemented.

§ 281.7 Indian tribal organization failure.

When Performance Reporting System reviews indicate that continuing deficiencies exist and corrective action proposals (including training and technical assistance to overcome these deficiencies), and/or appropriate sanctions have not, in the opinion of FNS, resulted in a sufficient degree of improvement, FNS will conduct a review to determine if the ITO has failed to properly administer the Food Stamp Program. FNS shall examine the relevant factors specified in § 281.3(b)(1) and shall follow the notification and determination procedures set forth in § 281.3 (c) and (d). If ITO failure is determined, FNS shall require the appropriate agency of the State government to resume administration of the Program on the reservation in accordance with an approved termination and transition arrangement.

§ 281.8 Transfer of program administration.

The transfer of program administration from an agency of the State government to an ITO pursuant to a determination of failure as provided for in § 281.3, or from an ITO to an agency of the State government pursuant to § 281.7, shall be contingent on the establishment of an effective termination and transition arrangement and an approved Plan of Operation from the State agency assuming program administration. Grant closeout procedures shall be followed in accordance with Part 277. FNS shall approve the transition plan, monitor its implementation and resolve any issues which may arise during the transition and after the transfer of program administration.

§ 281.9 Funding.

(a) *Agency of State government.* From the funds available to carry out this provision beginning July 1, 1979, FNS may pay to each agency of State government administering a Food Stamp Program on a reservation, 75 percent of all approved administrative costs, such as: Certification, issuance, outreach, fair hearings and quality control, incurred on the reservation for residents of the reservation and approved by FNS to meet standards set by the 1977 Food Stamp Act. FNS may pay each agency of State government administering a Food Stamp

Program on a reservation 75 percent of all approved administrative costs incurred off the reservation for activities begun after the effective date of these regulations that are primarily directed at providing better services for Indians on the reservation, such as hiring an interpreter or an Indian outreach worker, or moving a certification or issuance center closer to a reservation. The provisions of Part 277 apply to any funds received under this section.

(b) *Indian tribal organization acting as State agency.* From the funds available to carry out the provisions of this part beginning October 1, 1979, FNS is authorized to pay to each ITO acting as a State agency and administering a Food Stamp Program on a reservation 75 percent of all administrative costs approved by FNS as needed for operation of a Food Stamp Program on a reservation. Any approval for payment of funds in excess of 75 percent must be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Stamp Program on the reservation. The provisions of Part 277 apply to any funds received under this section.

§ 281.10 Appeals.

(a) *Failure/capability.* (1) Any State agency or ITO may appeal the determination made by FNS on:

(i) Whether or not the reservation definition is met;

(ii) The failure or absence of failure of an agency of State government to properly administer the Food Stamp Program;

(iii) The capability or incapability of an ITO to administer the Food Stamp Program;

(iv) The failure of an ITO to properly administer the Food Stamp Program;

(v) The Federal matching percentage level of administrative funding made available by FNS. To prevail the State agency must show a compelling justification that additional funding is needed for the effective administration of the Program on the reservation.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph (b)(2) of this section.

(b) *Procedures*—(1) *Time limit.* Any State agency or ITO which wants to appeal an initial FNS determination under paragraph (a) of this section must notify the Administrator of FNS, in writing within 15 days from the date of the determination and must advise FNS if it wishes a meeting or a review of the record.

(2) *Acknowledgment.* Within five days of receipt by the Administrator of FNS of a request for review, FNS shall provide the State agency or ITO by certified mail, return receipt requested, with a written acknowledgement of the request. The acknowledgment shall include the name and address of the official designated by the Administrator to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten day of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(3) *Scheduling a meeting.* If the Administrator, FNS, grants a meeting FNS shall advise the State agency or ITO by certified mail, return receipt requested, of the time, date and location of the meeting at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (b)(2) of this section.

(4) *Review.* If no meeting is conducted, the official designated by the Administrator, FNS, shall review information presented by a State agency or ITO which requests a review, and shall

make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph (b)(2) of this section setting forth in full the reasons for the determination.

(5) *Final decision.* The official's decision after a meeting or a review shall be final.

(c) *Funding and other sanctions.* Any State agency or ITO that wishes to appeal a funding determination made by FNS other than under (a)(5) of this section, or the application of a Federal sanction, shall follow the Administrative Review Procedures set forth in Part 276.

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Sec.

282.1 Legislative authority.
282.2 Project initiation.
282.3 Eligibility.
282.4 Approval of proposals.
282.5 Public notice procedures for demonstration projects.
282.6 Federal financial participation.
282.10 Workfare demonstration project.
282.11 California SSI conversion project.
282.12 SSI/Elderly cash-out demonstration project.
282.13 Work registration/job search demonstration project.
282.14 Pennsylvania food stamp direct delivery demonstration project.
282.15 [Reserved]
282.16 Monthly reporting/retrospective accounting demonstration project.
282.17 Monthly reporting/retrospective accounting: Operational procedures.
282.18 AFDC/Food stamp consolidation demonstration project.
282.19 Simplified Application Demonstration Project.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027), unless otherwise noted.

SOURCE: Amdt. 134, 43 FR 54215, Nov. 21, 1978, unless otherwise noted.

§ 282.1 Legislative authority.

(a) *Demonstration projects.* Demonstration projects are those authorized by section 17(b)(1) of the Act which states in part: The Secretary is authorized to conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects (hereafter called demonstration projects) designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households. The Secretary is further authorized to waive all or part of the requirements of the Act and implementing regulations to the degree necessary to conduct such projects, except that no project may be undertaken which would lower or further restrict the established income and resource standards or benefit levels.

(b) *Research projects.* Research projects are these authorized by section 17(a) of the Act which states: The Secretary may, by way of making contracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the food stamp program in delivering nutrition related benefits.

(c) *Evaluation projects.* Evaluation projects are those authorized by section 17(c) of the Act which states in part: The Secretary shall develop and implement measures for evaluating, on an annual or more frequent basis, the effectiveness of the food stamp program in achieving its stated objectives.

§ 282.2 Project initiation.

The Secretary shall, from time to time, publish a list of priority areas being considered for demonstration, research, and evaluation efforts, and invite and consider public comment on such lists. In determining such priority areas, the Secretary shall consider suggestions submitted by State and local agencies and other interested parties. The Secretary shall, as appropriate, seek grant proposals, through publication of a notice of intent in the FEDERAL REGISTER, or contract proposals, in accordance with the procedures prescribed in the Federal procurement regulations. (41 CFR, Ch. 1.)

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 206, 47 FR 46486, Oct. 19, 1982]

§ 282.3 Eligibility.

States or public or other nonprofit agencies or organizations or individuals are eligible for grants. Grants shall be subject to the appropriate provisions established in the Office of

Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments and Federal Management Circular (FMC) 74-4, Cost Principles Applicable to Grants and Contracts With State and Local Governments. States or public or private agencies or organizations or individuals are eligible for contracts.

§ 282.4 Approval of proposals.

(a) *Presubmission proposal review.* All suggestions for project operations and formal proposals for such operations shall be subject to the application procedures contained in OMB Circular A-102.

(b) *Federal procedures.* (1) Proposals for demonstration, research, or evaluation projects shall be reviewed by a panel consisting of appropriate FNS and departmental representatives.

(2) Representatives from other Departments and agencies may be invited to participate in proposal review where proposed projects could affect their programs.

(3) Proposals shall be ranked based on the criteria established in paragraph (c) of this section.

(c) *Approval criteria.* (1) Proposals shall be reviewed for responsiveness to the specific requirements contained in the notice of intent or request for proposal.

(2) In addition, proposals will be evaluated according to the following general criteria:

(i) The conceptual development and clarity of measurable objectives.

(ii) Probable effectiveness of the proposal to achieve the project objectives based on:

(A) A complete description of the purpose, hypotheses, demonstration, research or evaluation design, and plans for implementation;

(B) The adequacy of the work plan, indicating tasks, scheduling, and methodology; and

(C) A technical evaluation plan consistent with the objectives stated.

(iii) The capability of the applicant to conduct the project based on:

(A) A description of the qualifications of staff;

(B) Availability of necessary facilities, staff, and other resources;

(C) Administrative and supervisory capacity; and

(D) Knowledge of or previous experience in conducting demonstration, research, or evaluation projects.

(iv) The projected cost of the project.

(v) For demonstration projects, potential benefits in relation to projected costs and potential nationwide application.

(vi) The relationship of the proposal to other similar demonstration, research, or evaluation efforts.

(E.O. 12372 (July 14, 1982, 47 FR 30959); sec. 401(b) Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b))

[Amdt. 134, 43 FR 54215, Nov. 21, 1978, as amended by Amdt. 255, 48 FR 29124, June 24, 1983]

§ 282.5 Public notice procedures for demonstration projects.

(a) *General notices.* At least 30 days prior to the initiation of a demonstration project, FNS shall publish a General Notice in the FEDERAL REGISTER if the demonstration project will likely have a significant impact on the public. The notice shall set forth the specific operational procedures, shall consider the public comment received under § 282.2, and shall explain the basis and purpose of the demonstration project. If significant comments are received in response to this General Notice, the Department will take such action as may be appropriate prior to implementing the project.

(b) *Amended general notices.* If the procedures or explanation referred to in paragraph (a) of this section are significantly changed because of comments, an amended General Notice will be published in the FEDERAL REGISTER at least 30 days prior to the initiation of the demonstration project, except where good cause exists supporting a shorter effective date. The explanation for the determination of good cause will be published with the amended General Notice. The amended General Notice shall also explain the basis and purpose of the changes.

(c) *Reporting and recordkeeping requirements.* In addition, for demonstration projects with reporting and recordkeeping requirements which exceed the requirements set forth in OMB Circular A-102, the Department will obtain the necessary approval from OMB prior to project implementation.

(91 Stat. 958 (7 U.S.C. 2011-2029))

[Amdt. 206, 47 FR 46487, Oct. 19, 1982]

§ 282.6 Federal financial participation.

(a) *Level of funding.* (1) *Grant awards.* FNS shall pay all costs up to the level established in the grant award. When a demonstration project involves an area of ongoing State agency administrative responsibility, as established in § 271.4(a), FNS may pay up to 100 percent only of those administrative costs which exceed those usual and customary to program operations.

(2) *Contracts.* FNS shall pay all costs as established in the terms and conditions of the contract.

(3) *Additional funding.* The awarding of any funding for additional costs incurred when necessary to the successful completion of a project shall be subject to existing Federal grant and contracting procedures.

(b) *Limitations.* Federal financial participation shall be available to demonstration, research, and evaluation projects only for:

(1) Those activities and projects awarded by FNS. Funds shall not be transferred from one project to another;

(2) Those costs specified in the grant or contract up to the amount approved in the grant or contract; and

(3) Costs incurred during the project, as established in the grant or contract. Time extensions of the project may be granted where sufficient justification has been submitted to and approved by FNS.

§ 282.10 Workfare demonstration project.

(a) *Authority.* Subsection 17(b)(2) of the Act, as amended, mandates that the Secretaries of the United States Department of Agriculture and Labor jointly conduct a demonstration project involving the performance of public service work by food stamp participants subject to the work registration requirement.

(b) *Purpose.* The purpose of the workfare demonstration project is to determine the feasibility of having food stamp participants perform work in a public service capacity in return for the food stamp benefits to which the household is otherwise entitled. The project will be analyzed and evaluated on the basis of both operational feasibility and economic impact.

(c) *Areas of operation.* A workfare demonstration project will be conducted in one urban and one rural area in each of the seven FNS administrative regions. The selection of project sponsors will be made by the Departments of Agriculture and Labor based on applications submitted by political subdivisions or groupings thereof wishing to participate in the project.

(d) *Criteria for participation.* (1) A food stamp household member in a selected demonstration project area will be potentially subject to participation in the workfare project if the member meets the following criteria:

(i) He or she is required to register for full-time work under the terms of § 273.7(a). The normal exemptions from the work registration requirement, § 273.7(b), will be in effect for the purposes of this project;

(ii) The household's total non-excludable earned income, as defined in § 273.9(b)(1), is less than the household's coupon allotment. Work registrants who are members of households which receive unearned income shall be subject to participation in workfare if the household's non-excludable earned income does not exceed the value of the coupon allotment;

(iii) He or she has been unable to secure a job in the private sector after 30 days from the date of initial registration for work as required in § 273.7(a). Household members becoming exempt from work registration during this 30 day period shall not be required to participate in Workfare until such exemption ends, the member reregisters and 30 days lapse. An exception to the 30-day job seeking period will be made in one project designated by the Secretary of Agriculture. Under this exception, for Workfare purposes, the duration of time from the initial registration for work as required in § 273.7(a) until the time that the participant is eligible to be scheduled for a Workfare assignment will be reduced from 30 to 10 days; and

(iv) All public service jobs supported under the Comprehensive Employment and Training Act of 1973 (CETA) have been filled. For the purpose of this project all CETA jobs will be considered filled if:

(A) The CETA prime sponsor is basically fulfilling its hiring schedule (i.e., any openings are due to either normal attrition or the unavailability of qualified technical personnel); and

(B) With respect to any individual potentially subject to workfare:

(*1*) that the CETA sponsor has determined that such individual is not suitable for CETA jobs that are open; or

(*2*) That available openings for which the participant is qualified are not accepted by the participant because these openings do not constitute suitable employment in accordance with § 273.7(i)(1) and (2) (i) through (v). The continued basic fulfillment of the CETA public service employment hiring schedule and the determinations made under paragraph (B) (i) and (ii) of this section will be monitored by the Departments of Agriculture and Labor as described in § 282.10(h);

(2) Households containing more than one work registrant will have the option of deciding which member or members will fulfill the workfare requirement. At the time of application, or upon subsequent notification that the household is subject to workfare requirements, the household shall name one of its members as a prime designee to fulfill the workfare requirements. If acceptable to the workfare sponsor, the household may divide the workfare requirements among work registrants, but shall still designate one registrant as the prime designee. In such circumstances, the prime designee shall be disqualified if the household's workfare obligation is not completed since the second household member is considered to be acting in a proxy capacity for the prime designee. If either the prime designee or the other household member fails to complete his or her share of the workfare obligation but the other member is able to satisfy in full the remaining workfare hour obligation, the prime designee shall not be disqualified.

(3) If a household member is disqualified for refusal to comply with the workfare requirements, the remaining household members shall, if otherwise eligible, continue to receive food stamp benefits. The household shall still be subject to the workfare requirement during the month of disqualification if: the household contains another member subject to the work registration requirement, and, the household's non-excludable earned income (as computed for purposes of determining the household's allotment during the month of disqualification) is less than the reduced allotment the household receives during the month of disqualification. In such a circumstance, a household member who has not been disqualified and who is subject to work registration shall be subject to workfare participation during this month.

(e) *Conditions of employment.* (1) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in § 273.7(i)(1) (iii) and (iv); and § 273.7(i)(2) (i), (ii), (iv), and (v);

(2) The total number of required work hours each month will be determined by subtracting the household's monthly earned income, as defined in § 273.9(b)(1), from the household's coupon allotment, and dividing the remainder by the Federal minimum wage. For computational purposes, this earned income figure shall be rounded up to the next highest dollar amount. Fractions of hours to be worked shall be disregarded;

(3) In no instances shall the total number of hours worked under workfare, combined with any other employment, exceed 40 hours a week for any participant;

(4) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with the additional work requirements established in § 273.7(e) (1), (2), (3), or (4), such inability shall not be considered a refusal to accept workfare em-

ployment. The workfare participant shall inform the workfare sponsor of the time conflict to avoid disqualification and the workfare sponsor shall reschedule the missed activity if possible. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification. The State Employment Service Office shall make every effort not to schedule the additional work requirements established in § 273.7(e) (1), (2), (3), or (4) to conflict with workfare job scheduling, workfare employment or travel time necessary to reach or return from workfare employment. If the State employment office does not avert such a conflict, however, and the participant does not comply with the additional work requirements because he or she is fulfilling a workfare obligation, the noncompliance with the additional work requirement shall be considered to be for good cause;

(5) The workfare sponsor shall schedule employment for eight hour intervals whenever possible so long as such intervals do not conflict with other employment in which a workfare participant is engaged;

(6) If the workfare sponsor is unable to schedule the workfare participant for employment or is unable to provide the required work hours, the workfare participant shall not be disqualified;

(7) During any month in which the average hours of workfare employment combined with any other hours of employment equal 30 hours or more per week, the workfare participant shall not be subject to the job search activity requirements of § 273.7(d);

(8) Compensation for workfare employment shall be paid in the form of the food stamp allotment to which the household is otherwise entitled. Such employment shall be required until the household's coupon allotment (minus any nonexcludable earned income the household receives) is earned;

(9) The workfare sponsor shall assure that all persons employed in workfare jobs receive job related benefits at the same levels and to the same extent as similar non-workfare employees. Any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant;

(10) All persons employed in workfare jobs will be assured by the workfare sponsor of working conditions and promotional opportunities neither more nor less favorable than those provided other employees similarly employed;

(11) The provisions of section 2(a)(3) of Pub. L. 89-286 (relating to health and safety conditions) shall apply to the workfare program;

(12) Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under this program for which an application is being developed for submission, such organization shall be notified and afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary of Labor;

(13) Special consideration in filling workfare jobs will be given to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance. However, such special consideration shall not authorize the placement of any workfare participant when any other person is on lay-off from the same or any substantially equivalent job slot at the job site;

(14) That no workfare participant will be placed or remain working in any position substantially equivalent to a position which is vacant due to a hiring freeze unless it can be demonstrated that the job slot open due to the freeze resulted from a lack of funds to sustain former staff levels and was not established because of the availability of workfare participants;

(15) That no job vacancy will be created by the action of an employer in laying off or terminating the employment of any regular employee in anticipation of filling the vacancy with a workfare participant;

(16) That the workfare jobs in each promotional line in no way infringe upon the promotional opportunities which would otherwise be available to

regular employees, and, that no job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with.

(f) *Refusal to comply.* (1) If a household member subject to the workfare requirement refuses, without good cause, to accept an offer of workfare employment, to report for job scheduling, or to complete the entire workfare requirement, such person shall, after opportunity is given for a fair hearing, be disqualified from participation in the food stamp program for a period of one month. If, during the same month in which the refusal occurs, another household member subject to the work registration requirements completes the required workfare obligation for the household, no disqualification shall result.

(2) If a household member is disqualified, and no other member of the household is subject to the work registration requirements, then the household shall not have a workfare obligation during the month of disqualification. However, if such a household does contain another member subject to the work registration requirements, and the household's earned income (as defined in § 273.9(b)(i)) is less than the reduced allotment it receives during the month of disqualification, then the remaining member who is registered for work shall be subject to workfare during this month.

(3) Good cause, for the purpose of this demonstration project, shall be defined as:

(i) Circumstances beyond the member's control, such as, but not limited to: Illness; the illness or incapacitation of another household member requiring the presence of the workfare member; a household emergency; or the unavailability of either public or private transportation; or even of the minimal financial resources to obtain available public transportation when transportation is not provided by the sponsor. Lack of private transportation shall not constitute good cause when public transportation is available and the potential workfare participant has the financial resources to use public transportation;

(ii) Becoming exemp from the work registration requirement under the terms established in § 273.7(b);

(iii) Becoming exempt from workfare participation because the household's earned income exceeds the value of the household's coupon allotment. This includes earned income anticipated by the food stamp eligibility worker; or

(iv) Moving to follow the stream of employment while a part of the migrant labor force.

(4) For those households containing a workfare participant who has been disqualified from program participation, the income and resources of such disqualified persons shall be treated in accordance with § 273.11(c). In determining Food Stamp Program eligibility for the remaining household members, a pro rata share of the income of a disqualified member shall be counted as income to the remaining members and his or her resources shall continue to count in their entirety to the remaining household members.

(5) Households containing a disqualified workfare participant may be entitled to additional benefits during the month of disqualification if such participant has completed part of the workfare obligation. Such entitlement shall be established by calculating the household's entitlement without the disqualified member, subtracting from this amount any earned income as defined in § 273.9(b)(1), and then comparing this difference to the value of hours worked by the disqualified workfare participant (computed at the Federal minimum wage). If the value of hours worked is greater, the household shall be entitled to benefits in the amount of the difference. The entitlement thus calculated provides compensation when the value of hours worked by the disqualified member exceeds the household's coupon allotment (as calculated without the disqualified member) minus the household's earned income.

(g) *State agency responsibilities.* The State agency shall be responsible for undertaking the following activities:

(1) Determining, during the certification process, those work registrants subject to participation in workfare;

(2) Informing potential participants about the nature of the project, the options in household member designation, the penalty for noncompliance, their rights, procedures for appeal through the fair hearing process, and grievance procedures as established in § 282.10(h);

(3) Establishing and maintaining a recordkeeping system for each household subject to the workfare requirements;

(4) Forwarding information to the workfare sponsor on required work hours for each workfare participant and any subsequent information affecting a household member's workfare obligation, such as a change in the required work hours, or a change resulting in the inapplicability of the workfare requirement;

(5) Informing a workfare household who reports a change in earned income of the effect this change will have on the workfare hours requirement or the continuing applicability of the workfare requirement;

(6) Taking the following actions, as appropriate, on information received from the workfare sponsor:

(i) Upon notification that the participant has failed to comply with the workfare requirement (see § 282.10(f)(1)), the State agency shall issue a notice of adverse action in accordance with § 273.13 unless good cause has already been established in accordance with § 282.10(f)(2);

(ii) If the household member establishes good cause for noncompliance, as defined in § 282.10(f)(2), the requirement for further workfare participation shall be dependent on the continuing applicability of the workfare requirement;

(iii) If a notice of adverse action is issued and no appeal is filed, the State agency shall take action to disqualify the noncompliant household member for one month following expiration of the notice period. During the month of disqualification, no workfare job referrals shall be made for the disqualified member since this person is not a member of a food stamp household for that month. If, however, in the subsequent month, the household is still certified for participation and the member is still subject to the workfare requirement, the workfare job referral process shall be reinstated;

(iv) If a fair hearing is requested, any action to disqualify the noncomplying household member will be suspended until completion of the hearing. During pendency of the fair hearing, the workfare requirements will continue to apply. If the hearing results in a decision upholding the disqualification, the period of disqualification shall be effective in the first month following the decision;

(v) If disqualification resulted from refusal to complete the entire workfare requirement, the State agency shall provide benefits, where appropriate, under the conditions of § 282.10(f)(4);

(7) Take such action as is necessary to:

(i) Eliminate errors attributable to workfare requirements from the Quality Control error rate computations;

(ii) Establish procedures to refer alleged violations of project requirements by the workfare sponsor to appropriate USDA/DOL officials for investigation and resolution, as established in § 282.10(h);

(iii) Resolve grievances, to the extent possible, related to alleged violations by a sponsor of the requirements of these regulations or the Notice of Intent. In resolving such matters, contact shall first be made with the workfare sponsor. Issues which cannot be resolved at this level shall immediately be forwarded to USDA/DOL as specified in paragraph (h) of this section;

(iv) Provide fair hearings in those instances where participants claim that noncompliance resulted from alleged sponsor violations of project requirements. Such alleged violations shall also be forwarded immediately to USDA/DOL for review. Any findings of USDA/DOL officials may be entered into evidence at the fair hearing, so long as all affected parties have been informed of these findings at a reasonable time in advance of the hearing. When a fair hearing official renders a decision in such a case, the hearing decision shall be implemented, but the decision shall also be forwarded to USDA/DOL for review. Subsequent USDA/DOL findings regarding the alleged sponsor violations, if contrary to the evidence presented at the fair hearing, shall be provided to the State agency for a reconsideration of the fair hearing decision in light of the new evidence. If the initial decision is reversed, benefits shall be restored or a claim initiated as appropriate.

(h) *Compliance monitoring and workfare evaluation.* The Departments of Agriculture and Labor will establish procedures for monitoring compliance with the operational requirements of § 282.10 and for the evaluation of the workfare concept as demonstrated by project site operations. Persons, organizations or agencies alleging workfare sponsor noncompliance with the terms of these regulations or the Notice of Intent shall refer such complaints to the National headquarters of the Departments of Agriculture and Labor for investigation and disposition. Compliance monitoring shall include, but not be limited to:

(1) Administrative reviews of project site operations;

(2) Ongoing reviews of workfare sponsors' and related agencies' compliance with the terms of these regulations and the Notice of Intent which follows;

(3) Grievance procedures for resolution of complaints against workfare sponsor operations;

(4) Desk reviews of workfare sponsors' monthly activity reports.

(i) *Funding.* (1) Workfare sponsors will be reimbursed by the Department of Agriculture for 50 percent of all approved administrative costs involved in project operation. Such payments will be made on the basis of an approved budget and the negotiated grant agreement.

(2) Funding for project operations by the Department of Agriculture to a State food stamp agency shall be limited to the payment of coupon allotments to which food stamp households are otherwise entitled and of administrative costs attributable to normal food stamp program operations under the appropriate administrative formula. Food stamp administrative costs of the State food stamp agency at sites where a Workfare project is being operated (except as provided in paragraph (i)(3) of this section) are covered under normal certification and work registration activities.

(3) The cost of data compilations, such as the monthly report, required specifically of the Workfare sponsor or the State food stamp agency at the direction of the evaluation contractor (i.e., the contractor selected to evaluate the Workfare Demonstration Project) shall be fully reimbursed.

APPENDIX—NOTICE OF INTENT

In accordance with subsection 17(b)(2) of the Food Stamp Act of 1977, (Title XIII, Pub. L. 95-113), the Secretaries of Agriculture and Labor jointly announce their intention to conduct a demonstration project, hereafter called workfare, involving the performance of work in exchange for food stamp benefits. Under this project, members of food stamp households, subject to the work registration requirement, whose total household earned income is less than their household's coupon allotment, will be required to work in a public service capacity if they are unable to secure work in the private or public sector. The required hours of employment will be determined by dividing the household's coupon allotment, minus any nonexcludable earned income the household receives, by the Federal minimum wage. Compensation will be "paid" in the form of the monthly coupon allotment to which the household would normally be entitled. Persons required to participate in the workfare project who refuse to accept workfare employment will not be eligible to participate in the Food Stamp Program for a period of one month following each month in which refusal occurs. The workfare project will be conducted in one urban and one rural political subdivision or groupings thereof in each of the seven FNS/USDA administrative regions. Actual project operations are targeted to begin in conjunction with the implementation of the benefit computation provisions of the Food Stamp Act of 1977. Regulations issued by the Department on October 17, 1978 require that such provisions be implemented by State agencies no later than March 1, 1979.

This notice further seeks proposals for project operation from political subdivisions or groupings thereof wishing to participate in the Workfare Demonstration Project. Such proposals shall describe in detail how the political subdivision, working with the welfare agency and any other cooperating agencies that may be involved in the project, shall fulfill the provisions of the Act governing the Workfare Demonstration Project, which are enumerated below.

A. BASIC OPERATIONAL REQUIREMENTS

1. Household members, subject to the full-time work registration requirement, whose total household earned income is less than the household's coupon allotment, and who are unable to find work in the private or public sector after 30 days from initial registration for work, shall be subject to participation in workfare in addition to all other work registration requirements.

2. No workfare job shall be offered until all public service jobs supported under the Comprehensive Employment and Training Act of 1973 (CETA) within that subdivision have been filled. For the purpose of this project all CETA public service jobs will be considered filled if:

(a) The CETA prime sponsor is basically fulfilling its public service employment hiring schedule (i.e., any openings are due either to normal attrition or the unavailability of qualified technical personnel); and

(b) With respect to the individual potentially subject to workfare:

(i) The CETA sponsor has determined that such individual is not qualified for suitable CETA slots that are open; or

(ii) That available CETA openings, for which the participant is qualified, are not refused by the participant for reasons established in § 273.7 (i)(1) and (2) (i) through (v).

3. Compensation for workfare employment shall be paid in the form of the coupon allotment to which the hosehold is normally entitled.

4. The number of hours a workfare participant is required to work shall be determined by dividing the household's total coupon allotment, minus any nonexcludable earned income the household receives, by the Federal minimum wage.

5. A workfare participant shall not be eligible to participate in the Food Stamp Program for a period of one month for each month in which the participant refuses to accept a workfare job offer. Refusal, for the purposes of this demonstration project, shall be defined as actual refusal, without good cause, to accept workfare employment; refusal, without good cause, to report to the workfare sponsor for job scheduling; or refusal, without good cause, to complete the entire workfare hour requirement.

B. WORKFARE SPONSORS

1. *Eligibility.* To participate in the project, potential workfare sponsors must meet the following requirements.

(a) Be a political subdivision or grouping thereof (i.e., a State or a unit of local government or a combination of local governments), currently operating a public service employment program under State or local general assistance programs, the Comprehensive Employment and Training Act (CETA), or other legislation. This includes those political subdivisions sponsoring general assistance workfare programs. Political subdivisions who are not now operating a public service employment program may be considered for eligibility if the application is sufficiently detailed to enable the Departments to determine the proposer's administrative ability to sponsor a workfare demonstration project.

(b) Have the capability for effectively operating and administering a workfare project under the terms and conditions established in the Food Stamp Act, this Notice, and regulations established in § 282.10.

2. *Responsibilities.* The workfare sponsor shall be responsible for:

(a) Determining which agencies within its jurisdiction shall be used in the various administrative functions of this project. For administrative simplicity, a workfare sponsor may use a currently operational administrative structure if it can fulfill the requirements of this project.

(b) Establishing an operational system to fulfill the functions of the workfare project. At a minimum, the system shall:

(1) Provide for communication between involved agencies;

(2) Ensure the establishment of a sufficient number and variety of short-term public service jobs to allow testing of the workfare concept. Jobs may be allocated among State and local public service agencies and subdivisions thereof. To the extent consistent with the maintenance of effort requirements of this Notice and with personnel procedures and collective bargaining agreements of the workfare sponsor and cooperating agencies, jobs may also be allocated to private nonprofit agencies;

(3) Before contacting the potential workfare participant, assure that:

(i) 30 days have passed since his or her initial registration for work under the food stamp program; and,

(ii) All public service jobs supported under CETA are filled (see paragraph A2). Documentation that all CETA jobs are filled shall be noted in each workfare participant's records;

(4) Notify workfare participants of job scheduling and assure the continuing applicability of the workfare requirement. Such notification shall include the number of hours to be worked (based on the household's monthly food stamp entitlement and earned income) for the month and the penalty for noncompliance;

(5) Provide for monthly work scheduling for each workfare participant based on the number of hours of work each participant is required to perform, as determined by the welfare agency. Such employment shall be scheduled in eight hour increments whenever possible. However, such employment

shall not be scheduled to conflict with any other employment scheduled by the participant;

(6) Ensure timely reporting to the welfare agency on those workfare participants failing to report for job scheduling;

(7) Assign workfare participants to workfare jobs and ensure the provision of the necessary supervision;

(8) Monitor the hours of work of workfare participants;

(9) Have records maintained which identify the name of the sponsoring agency; the participant's name and food stamp case file number; the type of work to be performed; the period covered by the time reports and any additional benefits provided by the sponsoring agency, such as transportation, training, upward mobility programs and health benefits;

(10) Ensure monthly reporting on the total number and type of workfare slots available; the number of workfare slots filled by participants in the food stamp workfare project; the total number and names of participants who fully complied with the workfare requirement, including the number of hours worked; the total number and names of persons refusing to participate in workfare; the total number of hours worked; and other information as requested. Such reports shall be directed to the USDA/DOL evaluation contractor and elsewhere, as required, no later than the 15th of the month following the report month; and

(11) Ensure that all necessary reports are submitted as required.

(c) Establish a monitoring system to ensure that cooperating agencies are carrying out their responsibilities as established for the workfare project.

3. *Assurances.* All potential workfare sponsors shall provide the following assurances:

(a) They have the legal authority to conduct the project;

(b) They will be responsible for the development and execution of the project;

(c) They will comply with all requirements of the Civil Rights Act of 1964, of the Food Stamp Act of 1977, the regulations issued pursuant to these Acts which are applicable to the project and this Notice;

(d) That special consideration in filling workfare jobs will be given to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance. However, such special consideration in filling workfare jobs shall not authorize the placement of any workfare participant when any other person is on lay-off from the same or any substantially equivalent job at the job site;

(e) That no workfare participant will be placed or remain working in any position substantially equivalent to a position which is vacant due to a hiring freeze unless it can be demonstrated that the freeze resulted from a lack of funds to sustain former staff levels and was not established because of the availability of workfare participants;

(f) That no job vacancy will be created by the action of an employer in laying off or terminating the employment of any regular employee in anticipation of filling the vacancy with a workfare participant;

(g) That there will be planning for and training of supervisory personnel in working with participants;

(h) That the applicant sponsor will, where appropriate, maintain or provide linkages with upgrading and employment and training programs for the purposes of:

(1) Providing those persons employed in workfare jobs who want to pursue work with the employer, in the same or similar work, the opportunities to do so and to find permanent upwardly mobile non-workfare careers in that field; and

(2) Providing those persons so employed, who do not wish to pursue permanent careers in such fields, with opportunities to seek, prepare for, and obtain work in other fields; and

(i) That the workfare jobs in each promotional line in no way infringe upon the promotional opportunities which would otherwise be available to regular employees, and, that no job will be filled in other than an entry level postion in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with.

4. *Conditions of participation.* Sponsors of workfare shall insure compliance with the following conditions:

(a) Workfare will result in an increase in employment opportunities over these opportunities which would otherwise be available; will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work or wages or employment benefits); will not impair existing contracts for services, or result in the substitution of Federal for other funds in connection with work that would otherwise be performed; and will not substitute public service workfare jobs for existing federally-assisted jobs.

(b) Compensation shall be at 100 percent of the Federal minimum wage, to be paid by the Federal government in food stamps until the household coupon allotment (minus any non-excludable earned income) is earned. However, all persons employed in workfare jobs will be assured of workmen's compensation, health insurance, unemployment insurance and other benefits at the same levels and to the same extent as other similar employees of the employer, and to working conditions and promotional opportunities neither more nor less favorable than other persons similarly employed enjoy. Costs associated with such coverage shall be borne by the workfare sponsor.

(c) Work-related expenses, such as transportation costs, may be provided by workfare sponsors at their descretion.

(d) The cost of any work related supplies, such as uniforms and special equipment, shall be borne by the workfare sponsor if such supplies are necessary to employment.

(e) The provisions of section 2(a)(3) of Pub. L. 88-286 (relating to health and safety conditions) shall apply to the workfare program.

(f) Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under this program and for which application is being developed for submission, such organization shall be notified and afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary of Labor.

(g) Conditions of employment or training will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant.

C. Welfare Agency

1. Responsibilities of the welfare agency in localities in which a workfare project is operating shall be to:

(a) Establish a procedure within the food stamp eligibility determination process to identify potential workfare participants. Explain to such households, at the time of certification, the project's operation, the household's rights, and the penalty for noncompliance.

(b) Identify the total number of hours to be worked based on the household's entitlement minus any non-excludable earned income the household receives. Such information, in addition to any subsequent information affecting the member's workfare obligation, shall be transmitted as directed by the workfare sponsor.

(c) Receive preliminary information on workfare participants reporting to the job site and, at the end of the month, final information on the number of hours worked.

(d) Take action on information received. In instances of refusal without good cause, i.e., refusal to accept a workfare job offer, refusal to report for job scheduling, or refusal to complete the entire work requirement, the noncomplying household member shall be subject to the penalty of a one month disqualification as established in § 282.10(f) of the implementing regulations.

(e) Establish procedures for referral of complaints regarding workfare sponsor's alleged violations of this Notice and the regulations to the appropriate official of DOL and/or USDA for investigation and adjudication.

(f) Resolve, to the extent possible, grievances related to alleged violations of the requirements of this Notice or the implementing regulations. In resolving such matters, contact shall first be made with the workfare sponsor. Issues which cannot be resolved at this level shall be forwarded to USDA/DOL.

(g) Where workfare noncompliance and subsequent fair hearings are based on alleged sponsor noncompliance with project requirements, forward all such fair hearing transcripts to USDA/DOL for review.

(h) Maintain records on workfare activities, including:

(1) Recording in individual case files information on:

(i) Referral to the workfare sponsor; and

(ii) Noncompliance with the workfare requirements.

(2) Fair hearings and disqualifications as a result of workfare noncompliance; and

(3) Such other records as deemed appropriate.

2. *Assurances.* The participating welfare agency shall provide assurances that it will comply with all applicable requirements of the Food Stamp Act, this Notice, and regulations, as promulgated.

D. Funding

Funding for project operations by the Department of Agriculture shall be limited to the payment of the coupon allotment to which the food stamp household is otherwise normally entitled. The workfare sponsor shall be responsible for performing the sponsor's administrative activities and providing employee benefits as prescribed herein. The cost of data compilations (such as the monthly report required in paragraph B.2.(b)(10)) performed by the workfare sponsor at the direction of the evaluation contractor shall, however, be fully reimbursed by the evaluation contractor at a rate negotiated between the sponsor and contractor. Additional evaluation activities which the sponsor agrees to undertake at the request of the evaluation contractor shall also be fully reimbursed.

E. Records

All records pertaining to the Workfare Demonstration Project shall be available to USDA and DOL representatives or their designees for purposes of inspection and review. Such records shall be maintained for a period of three years from the date of project completion, or longer if requested in writing by USDA or DOL.

F. APPLICATIONS

Applications shall be submitted in an original and two copies and shall be received by the Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, USDA, 500 12th Street, SW., Washington, DC 20250, within 45 days following publication of the final regulations governing the workfare project. Applications must be signed by the representative of the potential workfare sponsor having the authority to commit the political subdivision to the project. The workfare sponsor shall insure that all necessary agencies, including the welfare agency, which are either involved or have review authority, have concurred in project operations. In addition to the information on project operations and assurances required above, the application shall contain the following information:

1. A precise description of the administrative procedures to be used and a work plan which establishes a schedule for development and implementation of the project.

2. A description of:

(a) The approximate number of jobs and the types of jobs which will be provided;

(b) Training and/or skill development which will be given; and

(c) Any employee benefits, including transportation costs, which will be provided to participants.

3. A statement of the qualifications and size of the staff to be used, including a project director, to accomplish the purpose of the project.

G. SELECTION OF PROJECT SITES

1. *Federal procedures.* (a) All applications will be reviewed by a panel comprised equally of representatives from USDA and DOL; and (b) Applications will be ranked based on the criteria established in paragraph (2) of this section.

2. *Criteria for selection.* To be selected, the potential sponsor must be located with a CETA prime sponsor basically fulfilling its public service employment hiring schedule or located in a political subdivision not served by a CETA prime sponsor. Meeting this criterion, the contents of the proposals will be weighted on the following criteria:

(a) Conceptual development and clarity of operational design;

(b) Geographical mix as required by the Food Stamp Act;

(c) Ability of the sponsor to provide a sufficient number and variety of public service jobs to test the feasibility of the workfare concept;

(d) Compliance of the work plan with the provisions governing the project as contained in the Act, this Notice, and applicable regulations;

(e) The adequacy of the work plan;

(f) The capability of the applicant to conduct the project based on:

(1) A description of the qualifications of staff;

(2) Availability of necessary facilities, staff, and other resources;

(3) Administrative and supervisory capacity; and

(4) Previous experience of the workfare employer in administering public service employment.

(g) Additional points shall be given to potential sponsors for the payment of participants' work-related expenses and/or provisions for transportation to the job site(s); the ability to supplement workfare hours with paid employment; the likelihood of an offer of permanent employment following the workfare employment; the development of new job skills; the career potential of jobs to be offered; and other assurances over and above the minimum levels required in paragraph B.3 (d) through (g).

3. *Selection.* USDA and DOL shall notify all proposers of those sites selected for project operation. To the extent possible, the Departments will select project sites which represent a cross-section of food stamp household characteristics.

H. MONITORING AND EVALUATION

The Departments of Agriculture and Labor shall establish procedures for monitoring the compliance of the workfare sponsors and related agencies with the requirements of the workfare demonstration project regulations. An evaluation shall be structured to assess both the operational feasibility and economic impact of the project. The cost of the evaluation shall be borne, in its entirety, by the Department of Agriculture. All data compilations performed by the workfare sponsor at the direction of the evaluation contractor, as distinct from the recordkeeping requirements necessary for the operation of the workfare project, shall be fully reimbursed by the evaluation contractor at a rate negotiated between the sponsor and the contractor. Additional evaluation activities undertaken by the sponsor at the request of the evaluation contractor shall also be fully reimbursed by the contractor.

(91 Stat. 950, as amended, 94 Stat. 357, (7 U.S.C. 2011-2027))

[Amdt. 139, 43 FR 55340, Nov. 28, 1978, as amended at 45 FR 54639, July 15, 1980]

§ 282.11 California SSI conversion project.

(a) *Authority.* Subsection 17(b)(1) of the Food Stamp Act of 1977 authorizes the Secretary of Agriculture to conduct demonstration projects designed to increase the administrative efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households. Under this authority, the Secretary will undertake a demonstration project involving the State administration of the food stamp program (FSP) for Supplemental Security Income (SSI) recipients in the State of California. This demonstration project is hereafter referred to as the California SSI conversion project.

(b) *Purpose.* The purpose of the California SSI conversion project is to test program changes that might increase the efficiency of the food stamp program and improve delivery of food stamp benefits to eligible households through the use of an alternative certification and issuance procedure as a means to improve delivery of benefits to the aged, blind, and disabled. Additional project goals are to expedite the certification process, reduce administrative costs, and simplify program administration for SSI households.

(c) *Definitions.* (1) "Application to Participate" means the application form designed by the California State agency for the California SSI conversion project.

(2) "Household," for purposes of this project, means:

(i) Individuals, residing in California, receiving SSI assistance as singles; to be treated as one-person households.

(ii) Couples, residing in California, receiving SSI assistance as couples; to be treated as two-person households.

(3) "Program" means the food stamp program as governed by the SSI conversion project rules for California.

(d) *Statutory requirements to be waived.* To the extent that any food stamp statutory provisions are inconsistent with this project those provisions are waived, under authority of subsection 17(b)(1) of the Food Stamp Act of 1977, so long as the project does not lower or further restrict the income or resource standards or benefit levels of SSI recipients over the course of this project. In order to facilitate the certification of households under the California SSI conversion project, the food stamp household definition (subsections 3(i), (1) and (2)) and the resource exclusions and eligibility limits (subsection 5(g)) are waived.

(e) *Area of operation.* The SSI conversion project will be conducted throughout the State of California and will be administered by the California State Department of Social Services.

(f) *Criteria for participation.* The potential SSI food stamp eligible caseload shall be developed from the California State Data Exchange (SDX) computerized listing of recipients of benefits under Title XVI of the Social Security Act.

(g) *SSI recipients not eligible.* The provision of subsection 3(i) of the Food Stamp Act of 1977, which excludes individuals from participation who reside in an institution or boarding house, is effective for this project. Individuals living in public institutions; categorized as in "nonmedical board and care" situations, including persons in private institutions and commercial boarding houses; or persons carried in "suspense" or "termination" categories according to SSI rules and consequently not receiving SSI benefits due to death, unknown address, relocation out of State or other like causes; shall not be considered for participation in the demonstration project.

(h) *Resource eligibility standards.* Households meeting the resource eligibility criteria for the SSI program shall be considered to have met the resource criteria for the food stamp program. Subsection 5(g) of the Food Stamp Act of 1977 is hereby waived for purposes of this project.

(i) *Application for participation.* (1) Individuals and couples listed on the SDX tape, with the exception of those persons discussed in paragraph (g), shall receive, where appropriate, notices which contain information and instructions regarding potential food stamp eligibility and which provide an abbreviated application for food stamp benefits.

(2) Announcement shall be made, through the mass media, of the discontinuance of the SSI food stamp cash-out procedure and of these changes in food stamp procedures.

(3) A state-operated, toll-free hotline shall be maintained, at least until No-

vember 1, 1978, to provide information and assistance. The hotline number shall be included in the announcements provided under paragraph (i)(2) of this section.

(4) SSI individuals or couples not initially receiving an application shall, if likely eligible for project participation, be provided with an application which will allow for an automatic computation of lost benefits. For those households found eligible, lost benefits shall be restored to the date of eligibility, but no earlier than September 1, 1978.

(5) 7 CFR 271.4(a)(1), (2), (4) and (5) (current) are not applicable to this project.

(j) *Eligibility.* (1) Eligibility criteria and net income computations shall be based upon relevant provisions of the Food Stamp Act of 1977, except as waived by these project rules. Subsections 5(c) (income poverty guidelines) and 5(e) (standard deductions) of the act are effective for purposes of this project along with any other subsections of the Food Stamp Act of 1977 which are implemented by regulations made final by this project.

(2) In computing household income, the following will be used: The OMB poverty guidelines adjusted as directed in subsection 5(c) of the Act (a maximum net income limit of $277 for one-person households and a $365 maximum net income limit for two-person households); a $60 standard deduction; a 20-percent earned income deduction; and a $80 maximum excess shelter/dependent care deduction based on the July 1, 1978, adjustment.

(3) 7 CFR 271.3(b) and (c) (current income and resource eligibility standards) are not applicable to this project.

(4) 7 CFR 271.10 (current SSI rule) is not applicable to this project.

(5) The maximum net income limits and standard deduction established by these regulations shall be subject, if necessary, to the January 1, 1979, adjustment procedures established in subsections 5(c) and 5(e) of the Food Stamp Act of 1977.

(k) *Application processing.* Eligibility and food stamp benefit levels shall be determined on an automated basis by the Computer Services Branch of the California Department of Social Service. All standard processing for program participation shall be achieved without local county involvement and without face-to-face interviews as follows:

(1) Household information shall be taken from the SDX file. In the initial stage of the SSI Conversion Project, eligibility and the level of benefits shall be based on net income as calculated using the SSI grant amount. Modification of the computer system shall be made by November 1, 1978, to allow eligibility and benefit determinations to be based on the income definition provided in these project rules. The State agency shall be required to determine if underissuances or overissuances resulted from the temporary use of the SSI grant amount during this project. Underissuances and overissuances shall be handled by the State agency in accordance with paragraphs (p) and (q) of this section.

(2) Use of the SDX data, verified under SSI verification rules, shall satisfy any food stamp verification requirements. 7 CFR 271.4(a)(2)(iii) (current) is not applicable to this project.

(3) Recipients reporting changes in household circumstances, according to SSI procedures, shall satisfy change reporting requirements for project purposes. 7 CFR 271.3(a)(iii) (current) is not applicable to this project.

(4) SSI recipients meeting the SSI citizenship or alien status tests for SSI eligibility, shall be eligible to participate in this project.

(5) By virtue of being aged, blind, or disabled, SSI recipients are exempt from the work registration requirement imposed by the Food Stamp Act of 1977.

(6) 7 CFR 271.4(a)(3) (current 30-day application processing standard) shall remain in force until amended.

(l) *Certification periods.* (1) Under the test procedure, SSI recipients shall be certified for up to 10 months. However, certification shall not extend beyond the duration of the demonstration project.

(2) Households certified under these project rules will be recertified, if eligible, under regular program rules prior to project termination.

(3) In the month prior to the end of the last project certification period, the California State Department of

Social Services shall notify SSI project recipients of the termination of their certifications, according to USDA regulations in force at that time.

(4) The level of household benefits may be adjusted by the State agency during any project certification period to take into account the termination of the use of the SSI grant awards in the calculation of allotment levels. Moreover, any changes in eligibility or benefit levels shall be treated as changes resulting from a "mass change in public assistance" and governed by 7 CFR 273.12(e)(2)(ii) (as proposed and made final by this rulemaking).

(m) *Issuance.* Allotment levels shall be calculated based upon subsections 5 (c), (d), and (e) and 8(a) of the Food Stamp Act of 1977, as determined by project regulations, except that allotment levels and eligibility may be initially computed based on SSI grant amounts.

(1) Upon determination of eligibility and benefit levels, computerized listings of food stamp eligibles and allotments shall be provided on a regular basis to a single centralized issuance agent.

(2) Coupons shall be distributed, based on the computer printed lists, by the central issuance agent. The issuing agent shall maintain records of all coupons issued and the date and amount of the coupons issued.

(3) Issuance shall be accomplished through a staggered mailing process, based on zip code regions, on a monthly basis. Such mailing shall insure that the participant receives the allotment on or about the same day each month.

(4) Alternative methods of delivery, such as the use of registered mail, shall be employed for high risk mail areas. At least first-class mail shall be used in mailing coupon allotments. In high risk areas experiencing losses, the State agency should consider mailing authorization to participate cards instead of coupons.

(5) 7 CFR 271.5 (current) and 7 CFR 271.6(d) (2) through (4) (current) are not applicable to this project. The last sentence of 7 CFR 271.6(d) (current) is not applicable to this project.

(n) *Mail losses.* All recipients whose coupons are lost in the mail shall be provided with an opportunity to obtain a replacement allotment according to 7 CFR 274.3(c)(1) (i) through (viii) of the proposed May 2 rules. Accountability controls shall be applied, to guard against repeated instances of replacement for individual cases. 7 CFR 274.3(c)(3) (proposed) is made final for this project.

(o) *Action notices.* (1) Specialized notices for actions of approval, denial, and termination shall be computer prepared and mailed to applicants and participants as appropriate.

(2) As is the case with standard notices of action, a State hearing application shall be provided on the reverse side of such notices with information regarding the action on the case, the opportunity for continuation of benefits in cases of termination or reduction of benefits (as provided in 1(4) of this rulemaking), and instructions for contacting the Department of Social Services in cases of dispute. Fair hearings shall be conducted under current regulations (7 CFR 271.1(o)) until final regulations are implemented under the Food Stamp Act of 1977.

(p) *Lost benefits.* Any underissuance of benefits to SSI project households resulting from the temporary use of the SSI grant award in determining household eligibility and calculating benefit levels (as opposed to the USDA May 2, 1978, proposed income regulations, made final by this rulemaking, and any later amendments) shall be defined as an "administrative error" as described in 7 CFR 271.1(q)(1), (2) (current). This section is effective until superseded by final regulations implementing the Food Stamp Act of 1977.

(q) *Claims.* Any overissuance of benefits to SSI project households resulting from the temporary use of the SSI grant award (as opposed to the USDA May 2, 1978, proposed income regulations, made final by this rulemaking, and any later amendments) shall be handled according to final regulations (not yet published) implementing the Food Stamp Act of 1977. Action on claims arising prior to final publication of those regulations shall be suspended until that date. 7 CFR 271.7(f) (current) is not applicable to this project.

(r) *Current regulations.* The current program regulations (7 CFR Part 270 et seq.) shall remain in force, except as specifically noted herein and except where inconsistent with any rules governing this project. Provisions of the Food Stamp Act of 1964, as amended, and relevant current program regulations, which remain in force for purposes of this project, shall continue in effect until revoked, amended, or modified according to final regulations issued pursuant to the Food Stamp Act of 1977.

(s) *Other project rules.* The following provisions of the proposed regulations (issued May 2, 1978; 43 FR 18874 et seq.) are made final for purposes of this project, until revoked, amended, or modified by later rulemaking:

(1) 7 CFR 273.3 (Residency);

(2) 7 CFR 273.9 (Income and Deductions). All potentially eligible project households must be provided with appropriate applications. While California is in the process of converting its computerized SSI operations to be compatible with these project rules, certain households which might have been eligible under 7 CFR 273.9 may be determined ineligible, based on the SSI grant award or SSI income computations. Those households which applied for participation, but were turned down based on the SSI grant award or SSI income computations, shall have their applications automatically reprocessed when the centralized computer system bases computations on the 7 CFR 273.9 definitions. Lost benefits shall automatically be restored to the appropriate households.

Potentially eligible SSI households, not initially sent an application for project participation, shall be mailed an appropriate application to determine eligibility for lost benefits and for prospective participation. SSI households which would clearly not be eligible for project participation (based on the SSI grant amounts and on the 7 CFR 273.9 definitions) need not be mailed applications.

(t) *Termination of the project.* This project may be terminated or modified by the U.S. Department of Agriculture at any time upon delivery of written notice to the California State agency or publication of Notice in the FEDERAL REGISTER.

(u) *Evaluation.* An evaluation of the project will be conducted by the California Department of Social Services and USDA. The project shall evaluate the use of the SSI unit for food stamp participation; the accuracy of certification based on information obtained from an automated data information system (SDX); the effect of the project procedures on participation; and the cost-effectiveness of such a procedure. The evaluation shall be achieved through the use of program participation data, administrative cost data, and the use of a State-administered questionnaire. Reviews will also be conducted to assess the accuracy of certification and assigned benefit levels.

[43 FR 39077, Sept. 1, 1978]

§ 282.12 SSI/Elderly cash-out demonstration project.

(a) *Purpose.* These regulations establish the procedures under which the demonstration project, hereafter referred to as the SSI/Elderly Cash-Out project, will operate. Under this project, eligible households all of whose members are either age 65 or older or have been determined eligible to receive Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act shall be provided a check equal to the value of the food stamp allotment they would otherwise receive. The purpose of the SSI/Elderly Cash-Out Project is to test the feasibility of providing cash in lieu of food coupons to elderly and handicapped persons as a means of improving the program participation of and service to these households.

(b) *Statutory requirements to be waived.* Subsection 17(b)(1) of the Food Stamp Act of 1977 authorizes the Secretary to waive any requirement of the Act to the degree necessary to conduct the demonstration project as long as the project does not lower or further restrict the income or resource standards or benefit levels of project participants. Under the SSI/Elderly Cash-Out project, the definition of a food stamp allotment (Subsection 3(a)) shall be waived. The limitations specified in section 16 on Federal cost-sharing of administrative expenses is also waived. Other requirements may be waived as the Secretary deems necessary consistent with the limitations on the waiver authority provided in subsection 17(b)(1). Any such waiver will be published in the FEDERAL REGISTER.

(c) *Regulatory requirements.* All current Food Stamp Program regulations (7 CFR Part 270 et seq.), except as specifically provided and except where inconsistent with any rules governing this project, shall govern the operation of this project.

(d) *Definitions.* For the purposes of this demonstration project:

(1) "Allotment" means the value of the cash payment, in the form of a check, a household is certified eligible to receive during each month;

(2) "Household" means: (i) Individuals living alone who are 65 years of age or older or have been determined eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act;

(ii) Individuals living together all of whom are 65 years of age or older or have been determined eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act.

(e) *Areas of operation.* The SSI/Elderly Cash-Out project will be conducted in eight project sites. The selection of States and localities will be made by the Department based on the applications submitted by State welfare agencies wishing to participate in the project.

(f) *Household participation.* (1) All certified eligible households, as defined in paragraph (d)(2) of this section, residing in the demonstration project sites shall receive a check representing the value of their benefit entitlement.

(2) The State agency shall provide those SSI and elderly households currently participating in the Program with a notice in accordance with established program procedures, prior to project inauguration, informing them that during the course of the project they will receive their food stamp benefits in the form of a check instead of coupons.

(3) Nonelderly households with SSI eligibility pending at the time of initial application for food stamp benefits shall be provided coupons instead of cash until such time as the food stamp office adjusts their allotment to reflect the initial receipt of SSI benefits. Nonelderly households participating in the SSI Program which terminate SSI participation during the course of the project shall receive any subsequent food stamp benefits in coupons.

(g) *Certification of households.* Households applying for program benefits under the demonstration project shall be processed and certified by the State agency in accordance with all appropriate Food Stamp Program provisions. The project shall involve two methods of processing households for program participation.

(1) At some demonstration sites, SSI and elderly households will be processed for participation in the Program through the Social Security Office. Procedures shall be developed, pursuant to guidelines addressing subsections 11(i)(2) and 11(j) of the 1977 Food Stamp Act, to process such households by means of outstationing State agency staff in Social Security Offices. Non-SSI elderly households at these sites will have the option of applying for participation at the Social Security Office or the Welfare Office.

(2) The other demonstration sites will process elderly and SSI households at the welfare or food stamp office for the duration of the one year demonstration period.

(h) *Delivery of benefits.* Project participants shall be provided with program benefits by the State or local agency in the form of a check in accordance with the benefit delivery standards and, where appropriate, expedited service standards afforded all other food stamp program participants. The time frame for processing emergency applications filed through the Social Security Office shall begin when the application reaches the food stamp worker (outstationed) or office.

(i) *Certification periods.* (1) The State agency may certify SSI and elderly households for project participation for the duration of the project, if appropriate, based on household circumstances. Certification periods may be extended beyond the duration of the project if household circumstances permit. However, such households shall be informed that program benefits will be received in the form of stamps rather than a check subsequent to project termination.

(2) In the month prior to the last month of project operation, the State agency shall notify SSI and elderly project participants of the termination of the project, and if appropriate, shall provide a notice of the expiration of their certification period.

(j) *Issuance of benefits.* The State agency shall identify each household certified as eligible to receive a food stamp check.

(1) Checks shall be prepared and issued based on the benefit entitlement of each project participant. Check mailings shall be conducted in accordance with procedures established for the mail issuance of allotments, or procedures used by the State agency for the delivery of public assistance checks.

(2) *Replacement issuances.* If mail delivery of checks is used, the State agency shall provide project participants whose checks are lost or stolen in the mail with an opportunity to receive a replacement check. Check replacements shall be conducted in accordance with regulatory procedures governing coupons lost in the mail. Controls shall be applied to safeguard against repeated replacements in individual cases and corrective action taken after two consecutive reports of nondelivery.

(k) *Funding.* Funding shall be provided through the State agency Food Stamp Program Letter of Credit for both administrative and program costs.

(1) *Program costs.* For each State agency participating in the demonstration project, FNS will provide funds through the State agency's established Letter of Credit to be used for the purpose of issuing food stamp benefits to eligible project participants. State agency drawdowns and accounting for such funds shall be subject to the requirements in Part 277.

(2) *Administrative costs.* FNS will pay an amount equal to 100 percent of approved administrative costs, over and above such costs as are usual and customary to Food Stamp Program operations. These costs will include, but not be limited to, increased outreach, training, and ADP costs. Budgets must be submitted and approved by FNS, and records available to substantiate that such costs are a direct result of the demonstration project in order for such additional costs to be eligible for 100 percent funding.

(l) *Records and reports.* (1) The State agency shall maintain all records related to project operation for a period of three years from the date of submission of the final project expenditure report, or longer if required in writing by FNS. Such records shall be available to FNS or its designee upon request.

(2) In addition to all other program reporting requirements, the State agency shall submit to FNS:

(i) A monthly project area report, providing the following data:

(A) The total number of households and persons participating in the project who are aged only;

(B) The total number of households and persons who are SSI aged only;

(C) The total number of households and persons who are SSI blind and disabled only;

(D) The total value of initial check issuances; and

(E) The average monthly benefit for each category of households described above.

(ii) A separate FNS-259 Form (Food Stamp Mail Issuance Report) to report, on a quarterly basis, monthly totals on the number and value of replacement issuances, if checks are issued by mail;

(iii) Reports on the status of project operations as established in the grant agreement governing project operations; and

(iv) A separate SF-269 Food Stamp Form (Financial Status Report) on a quarterly basis, reporting total project expenditures for both administrative costs and program benefits.

(m) *Monitoring and evaluation.* FNS will establish procedures for monitoring State agency compliance with the requirements of this section. The evaluation of the project will be conducted by an independent contractor. The State agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

APPENDIX—NOTICE OF INTENT

The Secretary of Agriculture announces his intention to conduct a demonstration project involving the cash payment (in the form of a check) of the value of the food stamp allotment to eligible households in which all members are either 65 years of age or older, or have been determined eligible to receive Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act. This demonstration project, called the SSI/Elderly Cash-Out project, is authorized under subsection 17(b)(1) of the Food Stamp Act of 1977 (Pub. L. 95-113). Households eligible to participate in the project shall apply at their local welfare office and be certified for food stamp assistance under standard program procedures and rules, and shall be issued their benefit entitlement in the form of a check rather than coupons. In addition, at some demonstration sites, SSI households will be processed for participation under the project through the Social Security Office. Under the latter procedure, SSI households desiring food stamp program assistance shall apply at the Social Security Office. Certification and benefit level determinations, however, shall be performed by the food stamp certification office. Non-SSI elderly households at these sites, shall have the option of applying through the Social Security or Welfare Office.

The SSI/Elderly Cash-Out project will be conducted in eight demonstration project sites, and will be operational for a period of one year. Project operations are scheduled to begin on or about April 1, 1980. The Department will evaluate the effectiveness of the cash-out procedure in improving program service to an the participation of the target population, and will examine the costs of the administrative procedures used. A contractor may be used for such an evaluation. An examination will also be made of the attitudes of the project population toward the Program as a result of receiving cash rather than coupons; the socio-economic and demographic characteristics of the involved caseload; and the impact of cash benefits on the nutritional intake of project participants. The evaluation shall make use of participation data, program and administrative cost data, client questionnaires and casefile reviews. The results of the evaluation will be forwarded to Congress for their consideration.

This Notice further solicits applications from State Welfare agencies wishing to take part in the project. Operational proposals may be made on a statewide basis or for a selected project area. Such proposals shall describe in detail how the State welfare agency intends to fulfill the requirements of the project which are discussed in detail below.

A. *Basic Operational Requirements.* 1. Households in which all members are either 65 years of age or older, or have been determined eligible to receive SSI benefits, which apply for food stamp benefits and are subsequently determined eligible for program project participation shall be provided with a monthly check representing the value of their food stamp allotment.

2. State agencies shall conduct outreach efforts, as developed by FNS, to ensure that potential participants are informed of the project and encouraged to participate.

3. Elderly and SSI households shall be certified in accordance with current Food Stamp Program procedures. SSI households at some sites will be processed for the Program through the Social Security Office. At these sites procedures will also be developed by means of outstationing State agency staff, to allow non-SSI elderly households to apply at the Social Security Office.

4. Eligible households will receive program benefits in the form of a State or local agency issued check in accordance with the standards for benefit delivery established for current program operations, including expedited service requirements, as appropriate.

5. In those States issuing checks by mail, checks reported as lost or stolen from the mails shall be replaced in accordance with the procedures established for coupons issued through the mail.

B. *State Agency Responsibilities.* The State agency shall be responsible for:

1. Implementing an outreach program to publicize the SSI/Elderly Cash-Out project. (Required techniques to be used shall be developed by FNS.);

2. Certifying elderly and SSI households for participation under current program procedures;

3. Notifying all current food stamp SSI and elderly households, prior to project inauguration, in accordance with established program rules for such procedures, or such operational guidelines as may be established for this project, that during the demonstration project, they will receive their program benefits in the form of a check rather than coupons;

4. Maintaining a separate or readily accessible file of records which identify all households certified to receive food stamp cash benefits. Such records shall contain, at a minimum, the case number, name, address, household size and benefit entitlement for each household and shall be updated, as appropriate, to reflect changes in household

eligibility and benefit entitlement. The State agency shall also maintain records on any households participating in the project who, for any reason, become nonparticipants. The reason for such nonparticipation shall be documented, if available. All such records will be available to FNS or its agent, upon reasonable notification;

5. Ensuring the preparation and issuance of checks based on each eligible household's benefit entitlement;

6. Ensuring that expedited issuance, in the form of a check, is provided to households who qualify for this service in accordance with procedures established for such issuance;

7. Withdrawing an amount to cover benefit checks from the Food Stamp Program Letter of Credit (LOC). Drawdowns shall be governed by the LOC requirements established in 7 CFR Part 277. Procedures will be established to minimize the time lapse between the drawing of Federal funds and their expenditure;

8. Minimizing the possibility of check loss by issuing checks in accordance with the procedures established for the mail issuance of coupons, or in accordance with State agency procedures for the delivery of public assistance checks;

9. In those States where checks are issued through the mail, providing participants, whose checks are lost or stolen from the mail, an opportunity to obtain a replacement check. Replacement procedures shall be conducted in accordance with the program standards established for coupons issued by mail. Safeguards shall be established to avoid repeated instances of replacement in individual cases and corrective action undertaken after two consecutive reports of nondelivery;

10. Planning and performing all functions necessary to ensure that only certified households receive program benefits;

11. Establishing procedures to avoid the duplicate issuance of food stamp checks;

12. Training caseworkers and other staff concerning all aspects of the project;

13. Notifying project participants of the termination of the project and their certifications if appropriate, according to current program rules, in the month prior to the last month of project operations;

14. Cooperating with all evaluation activities connected with the demonstration project under the sponsorship of the Department;

15. Taking such action as is necessary to identify and report separately in the Quality Control error rate computations, those errors attributable solely to the demonstration project requirements, i.e., intake through Social Security Offices and payment by check rather than coupons.

16. Preparing and submitting to FNS the following reports on the financial status of project operations:

(a) Quarterly Status Report: A separate SF-269 Food Stamp Form (Financial Status Report) shall be used to report expenditures for both administrative costs and program costs. Administrative costs shall only include those costs incurred in addition to normal Food Stamp Program costs and shall include, but not be limited to, additional outreach, training and ADP costs. This report is due 30 days following the end of the Federal fiscal year quarter being reported;

(b) Final Report: A final SF-269 Food Stamp Form (Financial Status Report) shall be submitted 120 days following the end of the project period. This final report will also be the final quarterly report;

17. Preparing and submitting to FNS reports on project participation and benefit issuances for each project area participating in the demonstration project as follows:

(a) A monthly project area report of participation and coupon issuance shall be provided. The report shall include the total number of households and persons participating for aged only, SSI aged, and SSI blind and disabled, the total value of monthly benefits issued, and the average monthly benefit for each group of households indicated above;

(b) For each project area participating in the demonstration project, if checks are issued by mail, a separate FNS-259 Form (Food Stamp Mail Issuance Report) to report, on a quarterly basis, monthly totals on the number and value of replacement issuances;

18. Maintaining all records pertaining to the project for a period of three years from the date of submission of the final project expenditure report, or longer if required in writing by FNS. All records shall be available to FNS or its representatives upon request;

19. Obtaining documented approval for the project from all appropriate State and local officials;

20. Obtaining documentation of cooperative agreements from other agencies or organizations necessary to the operation of the project. Sponsors shall provide written concurrence by the Social Security Administration Regional Office with the participation of the Social Security District Office in processing SSI and elderly households for the Program;

21. Developing and executing the demonstration project;

22. Assuming legal and financial responsibility for the accuracy of the list of households certified for project participation; and

23. Safeguarding and maintaining the integrity of demonstration project funds used under the State agency's Letter of Credit.

C. *Federal Responsibilities.* 1. FNS will develop required outreach techniques to be used in publicizing the demonstration project.

2. FNS will provide funding through the State agency's established Food Stamp Program Letter of Credit based on the budget estimate submitted by the State agency.

3. FNS shall be responsible for evaluating the demonstration project; this may be accomplished through use of a contractor.

4. FNS will provide whatever training and technical assistance is necessary during the project, including financial management assistance for project funds.

5. FNS will monitor project operations.

6. FNS will prepare reports consolidating data from all demonstration project sites.

D. *Federal Financial Participation.* FNS shall pay 100 percent of those approved administrative costs associated with the demonstration project which are identified as over and above such costs as are usual or customary to normal Food Stamp Program operations. FNS shall also provide 100 percent of program benefits to certified eligible participants.

1. To be eligible for 100 percent funding as specified above administrative costs must be specifically identifiable with the project. For example, outreach costs may be eligible for 100 percent funding only if records are maintained which identify such costs as directly attributable to demonstration project operations.

2. Funding shall be provided through the State agency Program Letter of Credit for both administrative and program costs.

3. FNS shall assume the cost for any data compilations which are separate and in addition to those recordkeeping requirements necessary for project operation and which are performed by the State agency at the request of the evaluation contractor.

E. *Applications.* 1. *Preliminary application.* State welfare agencies wishing to take part in the demonstration project shall make initial application by submitting a Letter of Intent. The Letter of Intent shall be submitted to the Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, 500 12th Street, S.W., Washington, D.C. 20250. Such letters shall be due by November 15, 1979. The letters shall contain the following information:

(a) A description of the Food Stamp project area or areas in which the demonstration project shall be carried out. This description shall include an estimate of the number of elderly and SSI households potentially eligible to participate in the Food Stamp Program; the current participation rate of the target population in the Food Stamp Program (or an estimate if exact numbers are not available) and any other information useful for understanding the nature of the food stamp project areas in which the demonstration project would be conducted, including, with respect to operating boundaries, the location of the food stamp project area(s) in relation to that of the Social Security Office in a potential demonstration site;

(b) A brief indication of past and current outreach techniques used in the project area or areas in which the demonstration project would operate;

(c) An expression of preference regarding a cooperative effort in conducting the test procedure through the Social Security Office as distinct from welfare or food stamp offices.

2. *Full application.* To complete the application process, State agencies shall submit the Application for Federal Assistance—Short Form, prescribed by the Office of Management and Budget (OMB) Circular A-102. Applications can be obtained from and shall be submitted in one original and two copies to the Deputy Administrator for Family Nutrition Programs. Applications must be received at the address noted above no later than December 17, 1979. All applications shall be submitted in accordance with all appropriate requirements as established under OMB Circular A-95 and must be signed by the representative of the State agency with the authority to commit the agency to the project.

3. In addition to the specific information on how the State agency will meet the basic requirements for project operations detailed in sections A. and B. of this appendix, the application narrative shall contain the following:

(a) A detailed description of the work plan with the task statements, milestones, and the methodology to be used in completing the tasks. (The work plan must be designed to facilitate implementation of the project not later than April 1, 1980. Any subsequent revisions or modifications of the plan must be approved by FNS);

(b) A proposed budget for both project program and administrative costs.

(1) A budget for administrative costs to be funded at 100 percent Federal Financial Participation (FFP) including each category used on the SF-269 (Food Stamp) form, if applicable;

(2) A budget for program costs with the projected caseload and other information used to arrive at this figure. Revisions to this proposed budget may be submitted to FNS as necessary or appropriate to provide for timely reimbursement. However, final revisions to program budget outlays must be submitted no later than 120 days after project termination to be accepted by FNS for approval;

(c) A description of the number and qualifications of key staff, including a project director, which will be used in accomplishing the purpose of the project, plus the percent of time to be allotted by the staff;

(d) A full description of any plan to use a contractor or subcontractor to carry out any part of the project, including, the scope of work, tasks, estimated costs for each task, and estimated personnel required;

(e) Documentation to substantiate arrangements made with other public or private agencies or organizations whose support and cooperation could be necessary to project operations.

F. *Selection of Sites*. 1. *Federal procedures*. (a) All State agencies applying as demonstration project sponsors will be reviewed by a panel consisting of FNS and other Departmental representatives, and representatives of other agencies, as appropriate. Final approval of joint processing sites shall be subject to joint FNS/SSA agreement. (b) Applications will be ranked based on the criteria established in (2) of this appendix.

2. *Criteria for selection*. (a) Conceptual development and clarity of procedures and operation design; (b) Consistency of work plan in relation to the provisions for the project as contained within the regulations and this Notice; (c) The adequacy of the work plan; (d) The capability of the applicants to conduct the project based on:

(1) A description of the qualifications of staff;

(2) Availability of necessary facilities, staff, and other resources;

(3) Availability of documentation establishing a cooperative effort between the potential sponsor and any necessary supporting agencies or organizations;

(4) Administrative and supervisory capacity;

(e) The current participation level of the target population within the project area; and

(f) Geographical dispersion, including consideration of:

(1) An area with population sufficiently large to produce an adequate eligible target population for evaluation purposes (for example, it would be desirable to have a minimum of 200 food stamp participants in the project and at least 400 persons in the target population estimated to be eligible for food stamps but not currently participating).

(2) A mix of geographical and administrative structures throughout the seven FNS administrative regions.

3. *Selection*. USDA will notify all applicants of those Sites selected for demonstration project operations.

[44 FR 59052, Oct. 12, 1979, as amended at 50 FR 20550, May 17, 1985]

§ 282.13 Work registration/job search demonstration project.

(a) *Purpose*. These regulations establish the procedures under which the Work Registration/Job Search Demonstration Project shall operate. Under this project, household members not exempt from the work registration requirements of § 273.7(b) shall be required to participate in a series of tests which are variations of the rules on work registration and job search that were published by the Department of Agriculture as final on January 16, 1981 (46 FR 4622). (Such finalized rules will, hereafter, be referred to as "the ongoing work registration and job search requirements".) These tests are designed to assess alternative methods for administration of the work registration/job search requirements which are mandated by section 6(d) of the Food Stamp Act of 1977, as amended.

(b) *Statutory requirements to be waived*. Subsection 17(b)(1) of the Food Stamp Act of 1977 authorizes the Secretary of Agriculture to waive any requirement of the Act to the degree necessary to conduct a demonstration project, as long as the project does not lower or further restrict the income or resource standards or benefit levels of project participants. Under the Work Registration/Job Search Project, the requirements of subsection 6(d) pertaining to work registration and job search may be waived at demonstration project sites during specific time intervals. The effective dates of each waiver will be publicized at the project sites to provide participants with specific knowledge of the occurrence. The limitations specified in section 16 on Federal cost-sharing of administrative expenses are also waived. Other requirements may be waived if the Secretary deems it to be necessary, consistent with the limitations on the waiver authority provided in subsection 17(b)(1). Any further waivers will be published in the FEDERAL REGISTER. The Secretary reserves the right to combine existing elements in various techniques or models, or to not implement/fund all the models described herein, as may be deemed appropriate to the realization of project objectives.

(c)(1) *Regulatory requirements.* All current Food Stamp Program regulations, including the ongoing work registration or job search regulations, except as specifically provided or except where inconsistent with any rules governing this project, shall govern the operation of this project.

(2) *Other requirements.* Other provisions which shall govern the operation of this project include:

(i) *Reregistration for employment.* Household members not exempt by § 273.7(b)(1) shall be required to reregister for employment once every 12 months as a condition of eligibility.

(ii) *Voluntary quit.* Applicant households whose primary wage earners voluntarily quit their job without good cause within the last 90 days, will have their application denied for a period of 90 days beginning with the month of the quit. Participant households whose primary wage earners voluntarily quit their most recent jobs without good cause shall be determined ineligible for participation in the Program for a period of 90 days beginning with the month in which the notice of adverse action period has expired. Additionally, employees of the Federal government, or of a State or local government, who participate in a strike against such government and are dismissed from their jobs because of participation in the strike shall be considered to have voluntarily quit their jobs without good cause.

(iii) *Noncompliance/sanctions.* Households containing members who have refused or failed without good cause to comply with any work registration or job search requirement shall be determined ineligible to participate for 90 days.

(iv) *Work registration exemption.* Household members responsible for the care of children shall be considered exempt only when the children are under six years old.

(d) *Areas of operation.* The Work Registration/Job Search Project shall be operated in up to 20 project sites for a period of approximately eighteen months beginning on or about September 1, 1981. The expanded Work Registration/Job Search Project shall be operated in seven project sites for a period of approximately eighteen months beginning no earlier than January 1, 1983.

(e) *Demonstration models.* (1) At those sites chosen to operate Model A, work registrants shall be subject to the ongoing work registration and job search regulations. During the operation of the demonstration project, work registrants shall be randomly split into treatment and control groups. The treatment group shall be subject to the demonstration requirement during the entire demonstration period; the control group shall not be subject to either work registration or job search requirements (§ 273.7) during the same period. The procedure of randomly assigning work registrants to treatment and control groups during the demonstration, and the application of model requirements to only the treatment group during the entire project shall be implemented at each of the sites selected to operate the remaining demonstration models described below.

(2) At those sites chosen to operate Model B, work registrants in the treatment group shall be subject to the ongoing regulations regarding work registration and job search. Selected work registrants shall, however, be subject to the requirements of the Job Finding Club, as discussed in paragraph (f) of this section, instead of the normal job search requirements.

(3) At those sites chosen to operate Model C, all work registrants in the treatment group shall be subject to the in-person registration requirements discussed in paragraph (g) of this section. No job search requirement shall be imposed.

(4) At those sites chosen to operate Model D, work registrants in the treatment group shall be required to register in-person at the SESA office, as discussed in paragraph (f) of this section, and shall be subject to the ongoing job search requirements.

(5) Work registrants residing in those areas selected to operate Model E which are selected for the treatment group shall be subject to in-person registration (as discussed in paragraph (g) of this section), the ongoing job search requirements, and, if selected, the re-

quirements of the Job Finding Club, which are detailed in paragraph (f) of this section, in lieu of the ongoing job search requirements.

(6) At those sites chosen to operate Model F, the basic requirements for work registrants shall be unchanged. System responsibilities, however, shall be changed to the extent that ongoing responsibilities assigned to the SESA in § 273.7 shall be assumed by the State welfare agency.

(7) At those sites chosen to operate Model G, work registrants in the treatment group shall be required to conduct applicant job search as discussed in paragraph (h) of this section and shall be subject to the ongoing job search requirements. System responsibilities shall be changed to the extent that ongoing responsibilities assigned to the SESA in § 273.7 shall be assumed by the State welfare agency. Additionally, sites operating Model G may require each work registrant to contact potential employers throughout the work registrant's certification period. This continuous job search requirement shall be based on the capabilities and characteristics of the participant, which may include his or her age, physical condition, ability or inability to speak English, current enrollment in job training programs, and recent employment history, as well as the distance he or she lives from potential employers and the job market situation in the area. The number of required contacts shall be determined by the State welfare agencies with prior FNS approval.

(8) At those sites chosen to operate Model H, work registrants in the treatment group shall be subject to the ongoing job search requirements and to the requirements of the Job Finding Club as discussed in paragraph (f) of this section.

(9) At those sites chosen to operate Model I, work registrants in the treatment group shall be subject to the requirements of the Job Finding Club as discussed in paragraph (f) of this section. If a work registrant is unable to find a job while participating in the Job Finding Club, he or she will be required to participate in the Workfare Program as discussed in § 273.22.

(f) *Job Finding Club.* At those demonstration sites where the Job Finding Club is in operation, the ongoing job search requirements shall be waived for those work registrants selected to participate in the Job Finding Club. The procedures established in this paragraph shall be substituted in their place. System responsibilities at certain sites shall be changed to the extent that ongoing responsibilities assigned to the SESA in this paragraph shall be assumed by the State welfare agency.

(1) *Job Finding Club assignment.* (i) During the initial assessment interview, or for those work registrants currently participating in job search, at the time of a subsequent interview, the SESA shall determine which work registrants shall be required to participate in the Job Finding Club. Persons not selected to participate in the Job Finding Club shall be required to meet the ongoing job search requirements established in § 273.7(e).

(ii) At the time that the work registrant is selected to participate in the Job Finding Club, the SESA shall explain to the work registrant the requirements of the Job Finding Club and the penalties for failure to comply with these requirements. In addition, the work registrant shall be provided with written information on the Job Finding Club which shall include the dates, time(s) and location of meetings.

(2) Operational Procedures. Specific operational procedures for the Job Finding Club may vary from site to site. Participants shall, however, be subject to the following basic requirements:

(i) Report to the Job Finding Club Monday through Friday, except for holidays, until suitable employment (§ 273.7(i)) is secured which exempts the work registrant from the work registration requirements (§ 273.7 (b)(viii)), or for a maximum of eight weeks, whichever occurs sooner. Failure to report to the Job Finding Club, without good cause (§ 273.7(m)), shall subject the household to disqualification as established in § 273.7(g);

(ii) Comply with the directions of the Job Finding Club Counselor regarding participation in Club activities and contact with prospective employers;

(iii) Report for interviews with prospective employers; and

(iv) Accept a bona fide offer of suitable employment, as defined in § 273.7(i).

(g) *In-person registration.* At those sites where in-person registration at the SESA office is required, the work registration requirement shall operate in the following manner:

(1) Persons required to register. Based on information contained in the application and other information obtained during the application process, the State agency shall determine which household members are required to register for employment. Each household member who is not exempted by § 273.7(b) shall register in person at the SESA at the time of initial application for program benefits and once every six months thereafter. Registration for employment at the appropriate SESA office shall be completed prior to household certification. In those instances where households qualify for expedited service, as discussed in § 273.2(i), the in-person work registration requirement shall be waived for the initial issuance if the SESA office is more than a two hour round trip by available public or private transportation, from the State welfare agency office where application is made. In such cases, in-person registration shall be completed prior to the issuance of any subsequent allotments. The expedited service time limits shall run from the time that the State agency receives notice that the in-person registration is completed, as set forth in paragraph (g)(3)(iii) of this section, or the household has returned to the food stamp office with proper documentation as set forth in paragraph (g)(3)(ii) of this section, whichever occurs earlier.

(2) *State agency responsibilities.* (i) The State agency shall be responsible for informing all applicants or potential applicants of the requirement that all non-exempt persons must register in-person at the SESA office as a condition of eligibility. This information shall be provided in a manner which would allow potential applicants, if they so choose, to pre-register at the SESA office prior to the food stamp certification interview.

(ii) Upon reaching a determination that a household member is required to register, the State agency shall explain to the applicant the procedures for registering for work at the SESA (including the fact that the applicant may proceed immediately to the SESA office and register and same day that the applicant visits the State agency office), and the consequences of failing to register. Such information shall be both explained orally and provided in written form.

(iii) The State agency shall complete, to the extent possible, the certification process at the time of the food stamp interview so that the application can be readied for decision-making once the in-person registration requirement is completed.

(iv) The State agency shall provide a referral form to each person required to register for work and shall direct the applicant to the appropriate SESA.

(v) The State agency shall work with the SESA to ensure that persons subject to the work registration requirement are expeditiously interviewed by the SESA.

(vi) Upon receipt of notification from the SESA or directly from the applicant that all persons within a household who are subject to the work registration requirement have registered, the State agency shall complete application processing.

(vii) If the State agency does not receive notification of the applicant's registration, the household shall not be certified until registration occurs. The application shall instead be processed in accordance with the procedures discussed in § 273.2(h)(2), for delays caused by the household. In addition, if an applicant registers but subsequently fails, without good cause, to comply with the interview requirement or additional work requirements imposed at the time of the interview, and the State agency office receives notification of this before the applicant has been certified, the application shall be processed in accordance with the procedures in § 273.2(h)(2) for delays caused by the household.

(3) SESA responsibilities. The SESA shall be responsible for the following activities:

(i) Establishing, with the State agency, procedures to ensure the expeditious interviewing of food stamp applicants. To the extent possible, such interviews shall be scheduled to occur on the same day that the applicant makes initial contact with the SESA, but they must occur no later than three working days from the day of initial contact with the SESA office;

(ii) Allowing food stamp applicants to register on the same day as their initial contact with the SESA, and providing applicants with documentation of their registration on the same day. If the interview appointment is scheduled for the same day, the registration form may be completed during the interview. If it is scheduled for a later day, applicants shall be allowed to register at the time of the initial contact, and documentation of registration shall be provided at that time. By providing such documentation, the applicant may return, if he or she chooses, to the State agency to document his/her registration without waiting for the interview appointment;

(iii) Notifying the State agency, within one working day, of all food stamp applicants registered;

(iv) Conducting an interview. At the time of the interview, the work registrant shall be provided all services normally available to "walk-in" clientele, including job market information, the Job Bank, and referral to available employment;

(v) Recontacting those registrants failing to report for their scheduled interview to arrange a second interview appointment; and

(vi) Notifying the State agency, within five working days, of those food stamp applicants who fail, without good cause, to comply with the interview requirement or any additional work requirements imposed at the time of the interview.

(4) Household member responsibilities. Those persons identified by the State agency as required to register for work shall be responsible for the following activities:

(i) Reporting to the SESA for an interview;

(ii) Completing a work registration form at the time of contact with the SESA;

(iii) Returning to the State agency with a notification of registration, if they so choose; and

(iv) Complying with the additional work requirements of § 273.7(f).

(h) *Applicant Job Search.* (1) The State agency may require Program applicants to conduct job search. Failure to comply with the applicant job search requirement, without good cause, shall result in a household's application being denied for a period of 90 days beginning with the date of application. The household shall be advised of the reason for the denial and of its right to reapply and/or to request a fair hearing. If the applicant's noncompliance is determined after certification, then disqualification shall be calculated as for any other participating household as described in § 273.7(g).

(2) The State agency shall process all applications in accordance with the timeframes established in § 273.2(g). The State agency, however, may delay disposition of the application pending receipt of proof of compliance with the applicant job search requirement. In this situation, the application would be processed in accordance with the procedures discussed in § 273.2(h)(2) for delays caused by the household.

(i) *Funding.* FNS will provide both State agency and SESA sponsors with funding equal to 100 percent of costs associated with the project which are above those normal and customary to administration of the ongoing work registration and job search requirements.

(j) *Records and reports.* Involved State agencies and SESA's shall maintain records on both model operations and results in a manner prescribed by FNS and DOL.

(k) *Monitoring and evaluation.* FNS shall establish procedures for monitoring State agencies' compliance with the requirements of § 272.13. FNS shall assume primary monitoring responsibility for all site operations. The evaluation of the project shall be conducted by an independent contractor. The State agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

(91 Stat. 958, as amended (7 U.S.C. 2011-2029))

[Amdt. 167, 46 FR 46284, Sept. 18, 1981, as amended by Amdt. 249, 48 FR 29676, June 28, 1983]

§ 282.14 Pennsylvania food stamp direct delivery demonstration project.

(a) *General.* This part describes the provisions of the Pennsylvania Food Stamp Direct Delivery Demonstration Project.

(b) *Purpose.* The Pennsylvania Food Stamp Direct Delivery Demonstration Project is designed to institute an alternate authorization to participate (ATP) issuance system that should eliminate duplicate issuances.

(c) *Scope and applicability.* The Direct Delivery Demonstration Project is to be conducted in the Hill District of Pittsburgh and the Federal, Passyunk, and Snyder Districts of Philadelphia. Approximately 4,500 public assistance households will be involved in Pittsburgh and another 14,000 in Philadelphia. In addition, 1,000 non-public assistance households are expected to volunteer for the program. Issuance operations for this test project will involve six bank branches in Pittsburgh and two non-bank agents in Philadelphia.

(d) *Funding.* This project is being funded by a direct grant to the Pennsylvania Department of Public Welfare in the amount of $102,093.94.

(e) *Persons affected.* Within the test districts participation in the Direct Delivery Demonstration Project will include:

(1) An estimated 18,500 public assistance households.

(2) An undetermined number of non-public assistance households in the Philadelphia test districts who show a pattern of repeated ATP losses.

(3) Approximately 1,000 non-public assistance households in Philadelphia that volunteer for the test project.

(f) *Exempted households.* The reasons for exemption are:

(1) *Physical and mental health.* Individuals incapacitated by illness, physical or emotional handicaps.

(2) *Home responsibilities.* The client will be required to provide services at home because of illness or incapacity of another member of the household on a sustained basis. If such a payee can make adequate arrangements for the required services, he may participate in Direct Delivery.

(3) *Location of participating agent.* Individuals living so remote from any participating outlet that it will be impractical for them to participate.

(4) *Religious beliefs.* Individuals whose religion prohibits the photographing of members or followers. Affiliation must be verified.

(5) *Employment.* An individual employed at a location so remote from any participating issuance agent within the county of residence or outside a district office boundary as to render his participation in the Direct Delivery System unreasonable. The person is excused from Direct Delivery provided he has not had repeated replacement requests.

(g) *Issuance of benefits.* Households participating in the Food Stamp Direct Delivery Project will be assigned to a designated issuance outlet.

(1) *The issuance outlet.* These locations will receive the participating household's ATP each month. For each food stamp issuance, the participant will go to the assigned issuance point to pick-up his ATP.

(i) Public assistance households will be assigned to the same issuance outlet where they currently receive their public assistance check.

(ii) Non-public assistance households will be assigned to the issuance outlet most convenient to that household.

(2) *Staggered issuance.* ATP issuance will be tied to the public assistance grant receipt date. The public assistance grant payment day schedule runs through the tenth working day of each month.

(3) *Access to the ATP.* The participating household's ATP will be available for pick-up at the issuance outlet until the end of the month. The ATP will only be made available to the household head (or the person whose picture appears on the photo ID) at the issuance outlet.

(4) *Authorized representative.* If an authorized representative is required

to obtain the ATP, then the authorized representative shall take the household's Food Stamp identification card to the certification office where a replacement ATP will be manually issued to the authorized representative.

(i) When an emergency authorized representative is required, households shall be given a form to complete when they need to use an emergency authorized representative.

(ii) The head of household and the authorized representative shall sign the form. The authorized representative shall then take the form and the participant's food stamp identification card to the certification office.

(h) *Identification process.* The Food Stamp Direct Delivery Project will involve the use of a photo identification card.

(1) Public assistance households will present their public assistance photo identification card along with their food stamp identification card to properly identify themselves to the issuing agent.

(2) Non-public assistance households electing to participate in the project will receive a photo identification card for use in obtaining their ATP.

(3) For ATP issuance, the identification process is as follows:

(i) The client must present the Public Assistance photo ID card to receive the PA check. The Food Stamp ID card must also be presented.

(ii) The teller will compare the client's appearance with the photo ID card and the signatures on the cards.

(iii) The ATP is pulled and the client will sign the receipt voucher (a stub on the ATP). The signature is compared with those on the IDs.

(iv) If the teller is satisfied as to the client's identity, the ATP is given to the client. The ATP is then signed and transacted.

(v) If the teller is not satisfied with the client's identity, the person shall be referred to the District office and the ATP voided. Once referred, the client's identity shall be ascertained at the District office, where a replacement ATP will be issued upon a determination of positive identification.

(i) *Evaluation of the food stamp direct delivery demonstration project.* An evaluation of this project will be conducted by FNS. The purpose of the evaluation will be to ascertain the effect direct delivery has had on the number of fraudulent duplicate issuances and the effect it has on participating households.

[Amdt. 176, 45 FR 66450, Oct. 7, 1980]

§ 282.15 [Reserved]

§ 282.16 Monthly reporting/retrospective accounting demonstration project.

(a) *Purpose.* These regulations establish procedures under which a demonstration project, hereafter referred to as the Monthly Reporting/Retrospective Accounting (MR/RA) Project, will operate. Under this project, participating households will be required to submit a monthly report as a condition of continuing eligibility. Benefit levels will be computed using the prior month's information.

(b) While subsections 5(f) and 6(c) of the Food Stamp Act provide States with the option of using an MR/RA system to determine household eligibility and benefit levels, the Department is undertaking the MR/RA project to determine the effects that the system will have on staff utilization, participation rates, quality control error rates, and client services. These effects will be determined through a systematic evaluation of project administration and results as determined by an independent contractor.

(c) *Related statutory provisions.* Subsection 5(f) of the Food Stamp Act authorizes the Secretary to develop retrospective accounting standards and regulations, while subsection 6(c) of the Act authorizes him to set standards for periodic reporting. Subsection 17(b)(1) of the Act authorizes the Secretary to waive any requirement of the Act necessary to conduct a demonstration project that might increase the efficiency of the program, as long as the project does not lower or further restrict the income or resource standards or benefit levels of project participants. For the purposes of the MR/RA project, certain requirements of the Act are hereby waived. Section 3(c) of the Act is partially waived in that the certification period will be continuous, rather than for a maximum of twelve months, for fifty percent of the households selected to participate in the MR/RA project in the Southeast Local Office of Cook County, Illinois. Other requirements shall be waived as the Secretary deems necessary, consistent with the limiations on waiver authority provided in section 17(b)(1). Such waivers, if necessary, shall be published in the FEDERAL REGISTER.

(d) *Regulatory requirements.* (1) All current Food Stamp Program regulations (7 CFR Parts 270 through 282) and procedures and requirements contained in § 282.17, except as noted below, shall be in effect for the purpose of this project.

(i) Section 282.17(a) (1) through (3) (inclusive) *Administration.* The administrative requirements contained in the above paragraphs are deleted for purposes of this demonstration project. FNS has approved the State agency's systems and procedures for implementing this project. Furthermore, project operations have been publicized and discussed with local recipient groups.

(ii) Section 282.17(b)(3) *Certification Period.* The certification period for 50 percent of the households in the Southeast Local Office of Cook County, Illinois which are selected to participate in the MR/RA project shall be continuous until such time as the household voluntarily withdraws, or the household is terminated from the program for failing to meet financial or non-financial eligibility requirements or to comply with the reporting requirements of § 282.17, whichever occurs earlier.

(iii) Section 282.17(m) *Recertification.* For those 50 percent of participating households subject to continuous certification periods, the regulation found at § 282.17(m) shall be waived in its entirety. Such households shall continue to be subject to interim household reviews as case conditions warrant, i.e., edit problems, recalculation of average income for households with special income circumstances, or fulfillment of the work registration requirement.

(e) *Areas of operation.* The MR/RA project will be conducted in Peoria and Cook Counties, Illinois. In Peoria, all food stamp households headed by an AFDC caretaker relative will be included in the experiment. This universe will provide the necessary basis for testing the administrative feasibility of the system. In the Southeast Local Office of Cook County, food stamp households headed by an AFDC caretaker relative will be randomly divided into an experimental group and a control group. Such caseload division will facilitate a comparative analysis of cases within the project site. In neither office will AFDC foster care cases be included. It is anticipated that the project will be initiated in Peoria with the mailing of monthly reports on or about the first of August 1981. The Cook County system will be initiated approximately three months later than the Peoria schedule.

(f) *Records and reports.* The State agency shall maintain all records related to project operations for a period of three years from the date of submission of the final project expenditure report, or longer if required in writing by FNS. Such records shall be available to FNS or its designee upon request.

(g) *Monitoring and evaluation.* FNS will establish procedures for monitoring State agency compliance with the requirements of this section and § 282.17. The evaluation of the project will be conducted by an independent contractor. The State agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

(h) *Quality control.* The State agency shall review MR/RA cases selected for the quality control sample in accordance with review procedures developed for a MR/RA system. The results of such reviews will be reported separately to FNS and will not be included in the State's cumulative allotment error rate.

For the purpose of project evaluation, FNS will require the State agency to draw a separate quality control sample for households assigned to the MR/RA project. The State agency shall be required to initiate corrective action to eliminate errors from those cases participating in the MR/RA project.

[Amdt. 200, 46 FR 40195, Aug. 7, 1981]

§ 282.17 Monthly reporting/retrospective accounting: Operational procedures.

(a) *Administration.* (1) The operation of a monthly reporting/retrospective accounting (MR/RA) system shall be at the option of each State agency. However, prior to the implementation of such a system, each State agency must receive FNS approval. Such approval shall be contingent upon the following conditions being met:

(i) The State demonstrates the ability to manage a MR/RA system effectively;

(ii) The State's proposed system meets the requirements of these regulations;

(iii) A pretest, as described in paragraph (a)(3) of this section is satisfactorily conducted;

(iv) The State agency has added provisions to its operating guidelines describing operational responsibilities and has received FNS approval of the changes; and

(v) The State agency has received FNS approval of all required forms.

(2) Each State agency wishing to operate a MR/RA system shall solicit public input and comment on its proposal to operate a MR/RA system, emphasizing those areas in which the State has some discretion.

(i) Prior to the beginning of the comment period, the State agency shall publicize in the media that its proposal to operate a MR/RA system, the proposed method of operation, and the requirements of the proposed system are open to public comment. State press releases and other methods of publicity shall contain addresses for obtaining further information and shall specify the method used for soliciting public comment. The State shall use one or more of the following methods:

(A) State Administrative Procedures Act (APA) if the Act includes procedures for obtaining public comment on food stamp matters and provides at least 30 days for comment;

(B) Publication (in addition to the notice of the available components) of a summary of MR/RA operational procedures. Also, instructions on how to obtain more information shall be included. This publication shall be in sufficient media sources to ensure general coverage in all affected project areas. In addition, all outreach contacts in the State's current plan shall be notified separately. Public comment shall be solicited for a minimum of 30 days.

(C) State-wide public hearing(s) at locations that are accessible to a significant number of interested persons.

(ii) State agencies shall review, analyze and consider all comments and prepare a summary of the major comments. The summary shall briefly outline the sources and content of the major comments and explain what was decided upon. Copies of the comments (either letters or transcripts of oral comments) and a comment summary shall be available for public inspection at the State office during its regular business hours. Copies of comment summary shall be made available free of charge upon written request. The comment letters or transcripts and the summary shall be retained for at least one year for both public and FNS review.

(iii) When soliciting comments, special emphasis shall be placed on the State options selected in the MR/RA system.

(iv) State agencies are encouraged to maintain any currently used methods and may also use other methods for obtaining public comment, in addition to the minimum requirements specified above; for example, States with APA's may also hold public hearings, or welfare or food stamp advisor councils may review the material.

(3) After a system has been designed, each State agency shall conduct a pretest of its proposed MR/RA system. The results of the pretest shall be used by the State agency in modifying the system as appropriate and shall be provided to FNS for review and determination of whether the State has met the conditions in paragraphs (a)(1)(i) and (ii) of this section. The pretest shall be designed to measure:

(i) Participating households' ability to understand and complete the monthly reporting form;

(ii) Participating households' ability to understand the conditions for qualifying for supplemental assistance and the methods for requesting such assistance; and

(iii) The State agency's ability to process the information contained in the monthly report and issue benefits based on such information.

(4) Unless otherwise specified in this section, all food stamp regulations shall apply to State agencies operating MR/RA systems and households participating in MR/RA.

(b) *Definitions.* (1) "*Adequate notice*" means a written notice that includes a statement of the action the agency has taken or intends to take; the reasons for the intended action; the household's right to appeal the agency's action or to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and have benefits restored to their previous level. If the 10-day Period ends on a weekend or a holiday and a request is received the day after the weekend or holiday, the State agency shall consider the request to be timely.

(2) "*Budget month*" means the fiscal or calendar month used in computing a household's level of benefits.

(3) "*Certification period*" means the period of time during which a household may receive program benefits. The certification period shall be continuous for all households for a minimum of six months to a maximum of twelve months or until the household voluntarily withdraws, or the household is terminated from the program for failing to meet financial or nonfinancial eligibility requirements or to comply with the reporting requirements of this section, whichever occurs earlier.

(4) "*Issuance month*" means the fiscal or calendar month during which a State agency issues benefits. In prospective accounting, the budget month and the issuance month are the same. In retrospective accounting, the issuance month follows the budget month and shall begin no later than one month after the end of the budget month.

(5) "*Prospective accounting*" means that benefits are computed using the best estimate of income and circumstances which will occur in a current or future month.

(6) "*Retrospective accounting*" means that benefits are computed using actual income and circumstances which existed in a previous month, the "budget month".

(7) "*Supplemental benefits*" means benefits issued by the State agency in a MR/RA system to maintain the household during the time it takes for the level of benefits to reflect a change in household circumstances or income.

(c) *Included households.* (1) Subject to the restrictions contained in paragraphs (c) (2) and (3) of this section, the State agency may require any household to have its allotment determined restrospectively and to report its circumstances monthly.

(2)(i) The provisions of this section may be implemented State-wide or in particular project areas within a State.

(ii) In those areas where the State agency choses to implement a MR/RA system, all households of the same type shall either be included or excluded from it. For example, the State agency may choose to implement the system for only AFDC households, for only non-assistance households, or for all households not included in the categories set forth in paragraph (c)(3) of this section.

(3) The following households shall not be covered by MR/RA:

(i) Migrant farmworker households, while they are in the migrant stream;

(ii) Households with a member on strike, which were not certified before the date on which the strike began;

(iii) Households in which all members are either elderly or disabled and none of whom have any nonexcludable earned income;

(iv) Households which the State agency is reasonably certain will be eligible to receive benefits for three months or less; and

(v) Households which require special assistance in order to apply for food stamps if that special assistance will not be available for completing the monthly reports. Special assistance shall include authorized representatives to complete monthly reports, home visits or telephone reporting in lieu of the report form. Such households may be comprised of blind, mentally or physically disabled persons, persons whose reading and writing skills are so limited that they cannot complete monthly reports on their own, or non-English speaking persons residing in project areas where the bilingual requirement of § 272.4(c) do not apply.

(A) The State agency shall screen all applicants subject to MR/RA to identify households that require special assistance.

(B) The State agency shall not be required to provide any assistance beyond that required elsewhere by the regulations.

(C) The State agency shall not require a household to obtain its own special assistance for completing monthly report forms as a condition of eligibility.

(d) *Information on system operation.* The State agency shall provide households that will be included in MR/RA the following information at the time of the certification interview:

(1) An oral explanation of the purpose of MR/RA and prospective and retrospective determination of income;

(2) A copy of the monthly report and an explanation of how to complete it and file it;

(3) An explanation of the documentation the household will need to submit to verify all earned income, actual utility or medical expenses if they would result in a deduction; and any other information requiring documentation in accordance with the requirements of § 273.2(f)(9)(ii);

(4) An explanation of the household's entitlement to supplemental benefits, the information that is needed before the State agency can issue supplemental benefits, and the method and timing for issuing supplemental benefits;

(5) A toll free telephone number which the household may call to ask questions or obtain help in completing the monthly report;

(6) Written explanations of the above information.

(e) *Determining eligibility and benefit levels during the initial months.* (1) The State agency shall determine initial household eligibility and benefit levels in accordance with the prospective accounting procedures established in Part 273.

(2) The period of prospective eligibility shall be determined by the State agency based on the requirements for transition to MR/RA established in paragraph (f) of this section. Sufficient information shall be gathered to allow the extension of prospective accounting if necessitated by a delay in application processing.

(3) The State agency shall not issue retroactive benefits for the initial months based on a monthly report which shows a household's earlier anticipation of circumstances to have been inaccurate. The State agency shall neither reduce nor claim benefits for the initial months based on a monthly report unless the State agency erred in computing a household's eligibility or benefit level, or the household failed to provide correct and complete information which was available to it at the time the State agency requested the information.

(f) *Transition to the MR/RA system.* The State agency shall convert participating households to the MR/RA system as soon as the following conditions are met:

(1) The initial budget month is not earlier than the first full month subsequent to the date of application;

(2) The household has received its notice of eligibility;

(3) The State agency has mailed monthly report forms in sufficient time to provide households with a minimum of five days from receiving the forms to the filing due date; and

(4) Submission and processing of the report will not result in a delay in the next regularly scheduled issuance.

(g) *Monthly reporting.* The State agency shall require each household in the MR/RA system to report on household circumstances on a monthly basis as a condition of continuing eligibility. The State agency shall not impose any additional change reporting requirements beyond the monthly report. However, in those instances where a supplemental issuance is to be computed, the household will be required to provide the information necessary to compute the supplement.

(1) *Report distribution and submission.* (i) The State agency shall ensure that each household participating in the MR/RA system receives a monthly report form at about the same date each month.

(ii) The monthly report form shall be mailed to the head of the household in sufficient time to allow the household head at least five days from the date the household receives the form until the filing due date.

(iii) The State agency shall provide a postage paid, return envelope for the monthly report.

(iv) The filing due date for the monthly report shall be no earlier than five days after the end of the budget month.

(2) *Monthly report form.* The State agency shall either use the FNS-designed monthly reporting form or design and obtain FNS approval of its own monthly reporting form. The report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(c). With FNS approval, the State agency may establish a method to include non-English-speaking households in areas not subject to the bilingual requirements in the MR/RA system. For example, the form may provide the name and telephone number of a bilingual worker to contact for assistance in form completion;

(iii) Specify the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which must be submitted with the form. Such verification will include, at a minimum, documentation of earned income, and actual utility and medical expenses to the extent that they would result in a deduction. Other items requiring verification may be requested by the State agency in accordance with the conditions established in § 273.2(f)(9)(ii);

(v) Identify the individual or agency unit that the household can contact to receive prompt answers related to questions on form completion. A telephone number, toll-free for households beyond the local calling area, shall also be included;

(vi) Include a statement, to be signed by the head of the household, indicating his or her understanding that the information provided may result in changes in the level of benefits, including reduction and termination;

(vii) Advise the household of the availability of supplemental benefits and the procedures for obtaining them;

(viii) Advise the household of its right to appeal an agency action, to request a fair hearing based on any decrease or termination of benefits or denial of supplemental benefits, or to file a complete, signed monthly report for reinstatement;

(ix) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud;

(x) Request the following information:

(A) Household name and address;

(B) Household composition as of the last day of the budget month;

(C) Nonexcludable unearned and earned income information, including income from self-employment that is not averaged, and infrequent or irregular income. Averaged income shall not be reported;

(D) Shelter costs. However, if a State agency's computer system is able to retain and use fixed shelter costs in its monthly computations the State agency may not require such costs to be reported monthly;

(E) Medical costs over $35 a month for elderly or disabled household members;

(F) Dependent care costs;

(G) Liquid resources exceeding $1500; and

(H) Acquisition of an automobile, including its make and year.

(xi) Request no other information, except that, if the form is a joint AFDC/FS monthly report form, other information necessary to determine AFDC eligibility may also be included if it is clearly indicated that non-AFDC food stamp households need not provide such information.

(h) *State agency action on reports*—(1) *Processing.* Following the due date for receipt of the monthly report, the State agency shall be responsible for taking the following actions:

(i) Reviewing the report to ensure there receipt, accuracy and completeness. The State agency shall consider a monthly report incomplete for food stamp purposes only if it is unsigned by the household head, is not accompanied by verification of reported earned income, or omits information necessary to either determine the household's food stamp eligibility or to compute the household's level of food stamp benefits.

(ii) Determining those items on the report which will require additional verification or information from the household.

(A) Items requiring additional verification shall include undocumented earned income, or utility or medical expenses which, if verified, would result in a deduction. The household shall also be required to submit documentation to support changes of more than $25 in unearned income if such documentation is not available to the State agency. The household shall also be required to submit other documentation if required by the State agency in accordance with § 273.2(f)(9)(ii), except for medical expenses.

(B) The State agency shall require verification of the household's medical expenses either monthly or only when the total medical expenses change by more than $25 from the previous month.

(C) Items requiring personal contact with the household might include such things as applicability of the work registration requirement or the addition of a new household member.

(iii) Contacting the household directly, as needed, to obtain further information on specific items.

(iv) Notifying the household, in accordance with paragraph (h)(2)(iii) of this section of the need to submit the report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(A) In the event that the household has not supplied verification of its earned income or submitted its monthly report by the end of the extension period, the State agency shall take action to terminate the household in accordance with paragraph (h)(2)(v) and (vi) of this section.

(B) If the household has failed to provide verification of utility expenses by the end of the extension period, the State agency shall allow the utility standard if the household is entitled to the standard.

(C) If the household has failed to supply verification of medical expenses by the end of the extension period, no deduction shall be allowed.

(D) If the household has failed to provide documentation of other items required to be verified in accordance with § 273.2(f)(9)(ii) the State agency shall take one of the following actions. If this change would result in a decrease in benefits, the State agency shall act on the change in determining the household's eligibility and benefit level. If the change would result in an increase in household benefits, the State agency shall take no action on the change until verification is received.

(v) Determining household eligibility by considering all factors, including income, retrospectively, i.e., from the corresponding budget month:

(vi) Determining the household's level of benefits. Benefit levels shall be calculated in accordance with the procedures set forth in § 273.10(e) but shall be based on:

(A) Earned and unearned income received or that has been averaged for the corresponding budget month. The State agency has the option of converting to a regular monthly amount the income of households that earn income weekly or biweekly;

(B) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average; and

(C) Household composition as of the last day of the budget month.

(vii) Issuing benefits in accordance with Part 274 on the time schedule set forth in paragraph (h)(3) of this section. Specific information on how benefit levels were calculated shall be provided with the issuance or in a separate notification.

(2) *Notices.* (i) All notices regarding changes in household's benefits shall meet the definition of adequate notice as defined in paragraph (b)(1) of this section.

(ii) When the State agency receives a complete and signed monthly report by the date specified, the agency shall determine the household's eligibility and benefit level. The State agency shall also provide the household with adequate notice of any changes from the prior benefit level and the basis for its determination. If the benefits are being reduced or terminated, the notice must be received by the household no later than either the date the resulting benefits are to be received or in lieu of the benefits.

(iii) If a complete and signed report is not received by the specified filing date, the State agency shall send an adequate notice to the head of the household within five days of the filing due date. The notice shall inform the household head that the monthly report is either overdue or incomplete, what action is needed to complete the form, and that he or she has 10 additional days to file a complete and signed report prior to the initiation of termination action. The State agency has the option of giving households more than 10 additional days for filing complete reports provided that the due date allows the State agency sufficient time to process the report and issue benefits before the 45th day following the end of the budget month. The notice shall also offer the State agency's assistance in completing an incomplete report.

(iv) If a complete and signed monthly status report is received within the extension period, benefits need not be issued by the normal payment date. Such benefits shall be issued, however, no later than the dates specified in paragraph (h)(3) of this section.

(v) The State agency may terminate the household's benefits if it has not received a complete and signed report by the end of the extension period.

(vi) If the State agency's policy is to terminate a household's benefits if a complete and signed report is not received at the end of the extension period, the State shall send a notice of termination to the household. The notice of termination shall meet the definition of adequate notice as defined in paragraph (b)(1) of this section and inform the household of its possible reinstatement if the report is completed or filed.

(vii) The termination notice should reach the household at least 10 days before the expected issuance of benefits. However, if due to the issuance schedule or the filing date of the report this is not possible, the termination notice must reach the household on or before the extended payment date.

(3) *Benefit issuance.* (i) The State agency shall, within 30 days of the end of the budget month, provide all eligible households who file signed and complete monthly reports by the scheduled filing date with an opportunity to participate, unless FNS determines that a longer issuance period is necessary. FNS may approve a longer issuance schedule for reasons such as coordination with an AFDC system or the staggered issuance of ATPs for security reasons. In no instance, however, shall the State agency extend the issuance period beyond 45 days following the end of the budget month.

(ii) For eligible households which file a signed and complete monthly report during the extension period, benefits shall be issued no later than

10 days after the normal issuance date, but in no event later than the 45th day following the end of the budget month.

(iii) Eligible households filing a complete and signed report subsequent to the extension period but prior to the end of the issuance month shall be provided an opportunity to participate no later than the extended issuance date or 10 days following receipt of the signed, complete report, whichever is later.

(iv) In no event shall a State agency reduce, terminate or suspend a household's benefits on the basis of a monthly report earlier than the appropriate issuance month.

(4) *Suspensions.* Each State agency operating a MR/RA system shall develop a procedure which will ensure that households losing their eligibility due to a temporary increase in net income are quickly brought back into the system. If, for example, a household experiences a $100 increase in income in January, making it ineligible for March benefits, the system must be able to respond to a request for a supplemental issuance in March due to a return to the normal income level.

(i) When households lose eligibility due to an increase in net income which is subject to further change, the State agency shall continue to supply such households with monthly reports for a minimum of one additional month. Households that are eligible based on the subsequent month's circumstances shall be issued benefits on their normal issuance cycle.

(ii) The State agency's system shall be structured to provide timely supplemental benefits to those households that became eligible and file a request for supplemental benefits during the initial month of ineligibility.

(5) *Conversion.* In those States where FS/AFDC households are subject to MR/RA, but some other categories of households are not subject to MR/RA, the State agency shall establish procedures to ensure the smooth transition of households from one system to the other.

(i) If the household's AFDC eligibility is terminated due to a change in a factor which affects only AFDC eligibility, the State agency shall continue to issue food stamp benefits, if the household is otherwise eligible, on a retrospective basis for one additional month. At the time the termination notice related to the AFDC payment is issued, the State agency shall also issue a notice of expiration regarding food stamp benefits. Such notice shall be issued in time to ensure that the household will have a sufficient time to timely apply for recertification.

(ii) The State agency has the option of continuing to issue food stamp benefits, if the household is otherwise eligible, on a retrospective basis for a second additional month in those cases where AFDC eligibility is likely to be reinstated, such as where earned income or household composition is likely to change again.

(6) *Termination.* The State agency shall take action to terminate those households who fail to file a monthly report, fail to file a complete report, or fail to comply with a non-financial eligibility requirement, such as registering for employment. As discussed in paragraph (g)(2)(vi) of this section, the monthly report shall inform households of their potential termination for failure to file a complete, signed report. The initial notice of failure to file a complete, signed report shall continue a similar message. The notice issued after the extension period shall state the reason for the termination, explain what the household needs to do to be reinstated, and advise the household of its right to a fair hearing and its right to receive continued benefits if it requests a fair hearing within ten days.

(i) *Supplemental benefits.* The State agency shall be responsible for providing supplemental benefits to those households which experience a significant change in household circumstances.

(1) Once the State agency has begun issuing benefits to a household based on retrospective information, the household is eligible to receive supplemental benefits if:

(i) The household's gross income during the issuance month is $50 lower than the gross income received in the corresponding budget month;

(ii) The household's net income during the issuance month is $50 lower than the net income in the corresponding budget month; or

(iii) The household size in the issuance month is larger than the household's size in the corresponding budget month due to the addition of one or more household members who are not members of another certified household.

(2) A household reapplying in its initial month of ineligibility shall be entitled to supplemental benefits if it is determined to be eligible and meets the conditions of paragraph (i)(1) (i), (ii), (iii), or (iv) of this section.

(3) In determining a household's entitlement to supplemental benefits and in calculating the amount of supplemental benefits, the State agency shall apply the same definitions of income, deductible expenses, and household size as would be used in calculating prospective eligibility or benefit levels. The State agency shall base the household's income and deductions on circumstances in existence at the time the State agency becomes aware of the change and on a reasonable anticipation of the household's circumstances for the remainder of the issuance month. For example, if a household has requested both AFDC and food stamp supplemental benefits and the AFDC supplement can be reasonably expected to be received during the issuance month, it would be included in income calculations.

(4) The amount of supplemental benefits shall be determined by calculating the household's entitlement for the issuance month using prospective accounting procedures, and subtracting from this amount the benefits received or scheduled to be received during the issuance month. Any food stamp claims or retroactive benefits received shall be disregarded in such calculation.

(5) Households should request supplemental benefits in writing using the FNS-designed form or a form designed by the State agency and approved by FNS. However, if the State agency becomes aware from a source outside the MR/RA system of a change in household circumstances which would result in a supplemental issuance, the State agency shall be responsible for informing the household of its potential eligibility to receive supplemental benefits and of the information the household must provide in order that the amount of supplemental benefits can be computed.

(6) The supplemental benefit request form shall be a simple, easily understood form which will allow the household to describe its reason for requesting supplemental benefits and its current month's circumstances. The State agency shall have the option of designing a form requesting prospective data for two months for those instances when the circumstances necessitating supplemental benefits are expected to extend beyond the month in which the change is reported. In all circumstances in which the State agency does not exercise this option, a separate supplemental benefit request shall be made for each month that supplemental benefits are desired.

(7) The State agency shall provide each participating household with at least two supplemental benefit request forms at the time of certification, and shall:

(i) Send the household a blank form each time supplemental benefits are provided or denied; or

(ii) Provide the household with a supplemental benefit request form as an enclosure to the monthly report form; or

(iii) Provide the household with a supplemental benefit request form no later than the date the monthly allotment and benefit explanation sheet are provided.

(8) A household shall be permitted to file a supplemental benefit request form with the State agency on the same day that it expresses interest in requesting supplemental benefits.

(9) The State agency shall have five working days from receipt of the supplemental benefit request form to issue eligible households either an ATP or coupon allotment.

(10) The State agency shall make every effort to ensure that the household submits the verification required in accordance with § 273.2(f)(9)(ii) within the five working-day issuance standard. However, benefits for the first supplemental issuance month

shall not be delayed beyond the five-day issuance standard due to the lace of verification. No other increased benefits (supplemental or regular allotment) based on the same change in circumstances will be provided until the required verification is submitted.

(11) The State agency shall not issue supplemental benefits based on a one-time change unless the change is reported in the month in which it occurs. For example, if a household experiences a $55 decrease in gross income in January but returns to its previous income level in February, the household would not be issued supplemental benefits if the decrease in January income was not reported until February.

(12) The supplemental benefit or denial thereof shall be accompanied by a benefit explanation sheet. The benefit explanation sheet shall inform the household of:

(i) The disposition of its request for supplemental benefits;

(ii) How the supplemental benefit was calculated; and

(iii) The household's right to a fair hearing if it disagrees with the disposition of the request or the amount of the supplemental benefit.

(j) *Action on information from sources other than the reporting system.* (1) Upon receipt of any information affecting eligibility or benefits, the State agency shall determine whether a household is entitled to supplemental benefits and issue them in accordance with paragraph (i) of this section.

(2) In the event a household reports information which alters a monthly report, the State agency shall adjust the allotment for the appropriate issuance month, if possible, or prepare a claim, if appropriate.

(3) If the State agency receives information from someone other than a household member which would result in decreased benefits, the State agency shall take no action until the appropriate monthly report, covering the period of the alleged change, is received. If the reported information does not appear on the monthly report, the State agency may consider the monthly report questionable and obtain verification from the household.

(i) If the household confirms the change, the State agency shall either prepare a claim, if benefits have already been issued for the appropriate budget month, or adjust the benefit level for the appropriate future issuance month.

(ii) If the household does not confirm the change yet the State agency believes the change has occurred, the State agency shall issue a notice of adverse action in accordance with § 273.13. No further action shall be taken on the change until the 10 day notice period has expired.

(k) *Subsequent participation.* (1) Households reapplying in the month following the last month of certification, or terminated households reapplying during the issuance month following the last month in which they received benefits, shall have their eligibility and benefit level determined in accordance with the procedures established by the State agency in accordance with paragraphs (h)(1) (iv) and (v) of this section.

(2) The determination of eligibility and benefit level shall be based on information in a monthly report that the household shall complete for the budget month which corresponds to the appropriate issuance month.

(3) If the household is ineligible based on the information contained in the monthly report, the State agency shall determine if the household is eligible to receive supplemental benefits based on circumstances in the issuance month.

(4) If the household is determined to be eligible to receive benefits under the conditions established in either paragraph (k) (2) or (3) of this section, the State agency shall provide such households with an opportunity to participate no later than 5 working days from the date the complete, signed monthly report or the request for supplemental benefits is filed. Eligibility for subsequent month's allotments shall be contingent upon the filing of complete, signed reports for the corresponding budget months.

(l) *Fair hearings.* (1) Households participating in a MR/RA system shall be entitled to fair hearings in accordance § 273.15.

(2) Any household which requests a fair hearing and does not waive continuation of benefits shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first.

(3) During the fair hearing period the State agency shall adjust regular and supplemental issuances to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(m) *Recertification.* (1) State agencies shall recertify an eligible household which timely reapplies and provide it with an opportunity to participate by the household's normal issuance cycle.

(2) The State agency shall recertify the household retrospectively, using the corresponding budget month for the first month of the new certification period in determining household eligibility and benefit level. However, where necessary because States issue benefits quickly and FNS approval has been obtained, information from the recertification interview may be reflected in the eligibility and benefits of the eligibility and benefits of the second month of the new certification period.

(3) The State agency shall recertify households according to one of the following options:

(i) *Recertification form.* The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(A) The State agency shall mail the form to the household along with a notice of the expiration, in place of the monthly report form.

(B) The household shall submit the form to the State agency in accordance with paragraph (g)(1)(iv) of this section.

(ii) *Monthly report and addendum.* The State agency shall provide each household with a monthly report form and an addendum to obtain all additional information necessary for recertification.

(A) The State agency shall mail the monthly report form to the household along with the notice of expiration in accordance with paragraph (g)(1)(iii) of this section.

(B) The household shall submit the monthly report to the State agency in accordance with paragraph (g)(1)(iv) of this section.

(C) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(D) The household shall submit the addendum to the State agency no later than the time of the interview.

(4) Households which submit a recertification form on a monthly report and addendum by the normal filing due date shall be considered to have timely reapplied and shall not have any interruption in benefits. Other State action on timely reapplication, proper handling in the event the State agency fails to act on a timely reapplication or the household fails to submit a timely reapplication, and the definition of good cause for failure to timely reapply shall be in accordance with § 273.12(c), (d), (e), and (f) of these regulations.

(5)(i) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency may schedule the interview at anytime during the month after the end of the last budget month of the old certification period. However, if the interview is scheduled for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report addendum to the interview.

(n) *Households with special circumstances.* (1) Households receiving self-employment income on other than a monthly basis, such as farmers, shall have such income averaged in accordance with § 273.11(a).

(i) In the initial month(s), household eligiblity and benefits levels shall be determined in accordance with prospective procedures as discussed in paragraph (e) of this section.

(ii) After the initial month(s), household eligibility and benefit levels shall be determined by normal retrospective budgeting methods with the exception that the averaged income amount shall be used in lieu of actual income received from the self-employment enterprise.

(iii) Households requesting supplemental benefits based on a change in household size or a change in deductible expenses or a change in income, other than self-employment income which has had no substantial decrease in income, shall have the amount of supplemental benefits calculated using the averaged income amount assigned to the issuance month, in addition to all other factors. If, however, the self-employment enterprise has experienced a substantial decrease in income, the average shall be recalculated based on anticipated earnings. The old income average shall be compared to the new averaged in determining if a supplemental issuance is appropriate. In addition, the new income average shall be used in determining the household's benefit level for subsequent months.

(2) Households which receive income by contract in a period of less than a year shall have such income averaged in accordance with the procedures discussed in § 273.10(c)(3)(ii).

(i) In the initial month(s) household eligibility and benefit level shall be determined in accordance with prospective procedures as discussed in paragraph (e) of this section.

(ii) After the initial month(s), household eligibility and benefit levels shall be determined by normal retrospective budgeting methods with the exception that the averaged contract income amount shall be used in lieu of actual contract payments.

(iii) Households requesting a supplemental issuance shall have their eligibility for supplemental benefits calculated using the averaged contract income amount assigned to the issuance month.

(3) Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided.

(i) In the initial month(s), household eligibility shall be determined in accordance with prospective procedures discussed in paragraph (e) of this section.

(ii) After the initial month(s), household eligibility and benefit levels shall be determined by normal retrospective budgeting methods with the exception that the averaged educational payment, once received, shall be included as unearned income during the months it is intended to cover.

(iii) Households requesting supplemental benefits shall have their request evaluated based on the averaged income assigned to the issuance month in addition to all other factors.

(4) Drug addict/alcoholic treatment centers shall be responsible for completing and filing monthly reports for residents who are subject to MR/RA.

[Amdt. 200, 46 FR 40196, Aug. 7, 1981]

§ 282.18 AFDC/Food stamp consolidation demonstration project.

(a) *General.* Section 17(b) of the Food Stamp Act of 1977 authorizes the Secretary to conduct on a trial basis experimental projects that might increase the efficiency of the program and to waive requirements of the Act to the degree necessary to conduct such projects, so long as resource and income limits for eligibility and benefit level are not lowered or further restricted. These regulations establish variations to the Food Stamp Program operating procedures which shall apply during the course of the demonstration project, hereafter referred to as the AFDC/Food Stamp Consolidation Project. In this project, certain requirements for both the Food Stamp Program and the Aid to Families with Dependent Children (AFDC) Program will be modified for closer program coordination.

(b) *Purpose.* The purpose of the AFDC/Food Stamp Consolidation Project is to test the effects of a number of program changes, particularly in defining resources and income, which are designed to simplify eligibility and benefit calculations for households applying for both programs. This project is part of a series of ongoing attempts to improve the management of administrative resources. This project is intended to test whether closer coordination between these two programs, which serve overlapping caseloads, will reduce error rates and administrative costs in both programs.

(c) *Areas of operation.* The project, which is being primarily sponsored by the Department of Health and Human Services (DHHS), will operate in the States of Vermont, South Carolina, and in Berrien County and the Redford District of Wayne County, Michigan. Certain Food Stamp Program requirements, as set forth in paragraphs (d) and (e) of this section, may be waived in these areas of operation.

(d) *Statutory requirements to be waived.* For the limited purpose of permitting operation of this project, the following requirements of the Act are waived and modified as explained. The three States participating in the project, and only these States, may avail themselves of any or all of the waivers and elect to use the corresponding substitute procedures set out in paragraphs (f) through (u) of this section. Project operators at the State level shall have the authority to develop, subject to FNS approval, whatever procedures are necessary to project operations. No optional requirement will lower or further restrict income or resource standards or benefit levels as established in sections 5 and 8 of the Act. The effective dates of waivers shall be publicized at the project sites. Other requirements may be waived as the Secretary deems necessary consistent with the limitations on the waiver authority provided in the Act. Any such waivers shall be published in the FEDERAL REGISTER.

(1) *Section 5(b) uniform national standards.* The requirement for uniform national standards may be waived to the extent necessary to allow operation of this project.

(2) *Section 5(d) exclusions from income.* Definitions of funds excluded from consideration as income within section 5(d) shall be expanded. The definitions that may be modified are those for irregular income in section 5(d)(2); educational loans and scholarships in section 5(d)(3); and a dependent child's earnings in section 5(d)(7). Judgment payments to members of certain Indian tribes shall be specified as one of the Federal payments excluded from consideration as income for food stamp purposes, as set forth in section 5(d)(10). These modifications are explained in detail in paragraphs (f) through (t) of this section.

(3) *Section 6(d)(2)(A) work registration exemptions.* The exemption from the food stamp work registration requirement which is granted to persons subject to and complying with a work registration requirement under Title IV of the Social Security Act, as amended (42 U.S.C. 602), may be extended to persons who are exempt from the Title IV requirement.

(e) *Regulatory requirements to be waived.* All current Food Stamp Program regulations (7 CFR Parts 270 through 282) shall govern the operation of this project, except the following paragraphs, which may be waived at the option of the participating project authority: §§ 273.6(a) (2) and (3) and (b)(1) through (3); 273.7(b)(1) (iii) and (iv); 273.7(c)(2); 273.8(d); 273.8(e)(7); 273.8(h) (2) through (5); 273.9(b)(1)(ii); 273.9(c)(2); 273.9(c)(3); 273.9(c)(7); 273.9(d)(6)(i); 273.10(e)(2)(i)(B); and 273.11(b)(1)(ii) (A) and (B). The three States participating in this project may elect to use the appropriate substitute procedures, as set forth within paragraphs (f) through (t) of this section, as agreed upon by the State and FNS.

(f) *Optional project procedure: Social security numbers.* (1)(i) If any household member(s) required to provide the State agency with an SSN is unable to do so prior to certification or recertification, that member shall be allowed to participate only if she/he consents to have the State agency file an application with the Social Security Administration (SSA) in his/her behalf and provides the necessary verification for such application. The State agency shall be responsible for completing the application and will receive validation of the new number when it is issued.

(ii) If any household member(s) required to provide an SSN who is unable to provide one refuses to consent to having the State agency apply for an SSN in his/her behalf, and can show no good cause for this refusal, that individual shall be disqualified from participation, in accordance with paragraph (c) of § 273.6. This disqualification shall last until the individual obtains an SSN or until she/he consents to have the State agency apply to the SSA on his/her behalf for an SSN.

(2)(i) For those individuals who provide SSN's prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(ii) For those individuals required to have an SSN who do not have one, the State agency shall offer to, and complete a Form SS-5, to obtain a SSN, at the household's request. To complete Form SS-5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS-5 to SSA. The State agency shall follow the same procedures for applicants who do not know if they have an SSN or who are unable to find their SSN.

(g) *Optional project procedure: WIN exemptions from work registration.* A household member subject to and participating in the Work Incentive Program (WIN) under Title IV of the Social Security Act is exempt from food stamp work registration requirements. Additionally, those AFDC household members who are determined exempt from the WIN Program will be considered exempt from the food stamp work registration requirements. If such a person loses his/her WIN Program exemption and does not participate in the WIN Program, she/he shall be required to comply with the food stamp work registration requirements as a condition of continuing eligibility. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption.

(h) *Optional project procedure: Caretaker exemption from work registration.* A parent or other household member who is responsible for the care of a dependent child under 6 or an incapacitated person is exempt from food stamp work registration requirements. The unavailability of adequate child care for children from 6 to 12 shall be considered good cause for refusing employment. If the child has its sixth birthday within a certification period, the individual shall fufill the work registration requirement as part of the next scheduled recertification process, unless the parent or caretaker qualifies for another exemption.

(i) *Optional project procedures: Transmittal of certain work registration forms to the SESA.* Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the work registration and job search requirements, his or her rights and responsibilities, and the consequences of failure to comply. The State agency shall provide work registration forms to the applicant for each household member required to register for employment, and permit the applicant to complete the form for those members in accordance with paragraph (a) of § 273.7. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency. An identifiable work registration form shall contain those items necessary for partial entry into the Employment Service Automated Reporting System (ESARS): the applicant's name, address, phone number, social security number (or some other identifying number when a social security number is not available), the expiration date of the household's certification period, an indication of exemption from job search, and any other information agreed upon by the State agency and SESA in their operating agreements. The State agency and SESA must agree before any information in the last category can be specifically required. If the registrant is an instream migrant and seasonal farmworker, or if the State agency knows that the registrant would otherwise be exempt from job search under the provisions of paragraph (f)(1)(ii)(c) of § 273.7, the State agency shall also indicate this on the registration form. The State agency shall not forward work registration forms to SESA until the household is certified, so that the SESA will not have to expend unnecessary efforts on applicants who are subsequently denied rather than certified for food stamps. The State agency shall forward the completed work registration form to the SESA having jurisdiction over the area where the registrant resides no later than five days after the date of household certification, unless a PA application is still pending at that time. In these cases, the State agency shall forward the completed form to the appropriate SESA within five days after the PA decision is made if such decision does not remove the food stamp work registration requirement.

(j) *Optional project procedure: Jointly owned resources.* Only a pro rata share of the value of resources owned jointly by separate households shall be considered available to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to less than a pro rata portion of the resource, the value of that lesser portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply.

(k) *Optional project procedure: Exclusion of disaster payments.* Non-government hazard insurance payments designated for the restoration of a home damaged in a disaster shall be excluded as a resource if there is a clear contract to restore the damaged home.

(l) *Optional project procedure: Handling of licensed and unlicensed vehicles.* (1) Licensed vehicles not exempt under § 273.8(h)(1) shall be individually evaluated for fair market value. That portion of their value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle.

(2) Unlicensed vehicles, which are not exempted completely by § 273.8(e)(3), (4), or (5), shall be individually evaluated for equity value. Their equity value shall be attributed in full toward the household's resource level.

(m) *Optional project procedure: Definition of rental income.* The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of § 273.9, shall be considered earned income. Ownership of rental property shall be considered a self-employment enterprise. Rental income shall be deemed earned if a member of the household assumes responsibility for property management, which may include custodial functions. If a third party is employed to manage the property and no household member has any specific responsibilities for property management, the income shall generally not be considered earned (such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient). Payments from a roomer or boarder shall also be considered self-employment income.

(n) *Optional project procedure: Exclusion of irregular income.* Irregular income, defined in either of the following ways, shall be excluded from household income:

(1) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $25 per month; or

(2) Any income in the certification period which is not received on a periodic basis, making its receipt infrequent or irregular to the point that it cannot be reasonably anticipated and which has no substantial effect on the calculation of benefits.

(o) *Optional project procedure: Exclusion of educational loans and scholarships.* Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition, mandatory school fees, books, equipment, and transportation at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped, are excluded from household income. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. Basic Educational Opportunity Grants are totally excluded as income.

(p) *Optional project procedure: Exclusion of earnings of a dependent child.* The earned income (as defined in paragraph (b)(1) of § 273.9) of children who are members of the household and who have not attained their 18th birthday shall be excluded as household income.

(q) *Optional project procedure: Exclusion of income excluded by other statute.* In addition to the funds listed in § 273.9(c)(10) which are excluded from income consideration by other Federal statutes, judgment payments to members of certain Indian tribes, as mandated in Pub. L. 92-254, shall be excluded from consideration as income in calculating food stamp eligibility and benefits.

(r) *Optional project procedure: Standard shelter insurance deduction.* The State agency shall develop a method, subject to FNS approval, for establishing a standard utility allowance for use in calculating shelter costs of those households which incur certain utility costs separate and apart from their rent or mortgage payments. Households which do not incur any separate utility charges or which are billed separately for only telephone costs, water, sewerage, and garbage collection fees shall not be entitled to claim the standard utility allowance. The standard utility allowance may have a separate standard for each utility identified in paragraph (d)(4)(iii) of § 273.9 or it may be a single standard. If it is a single standard, the State shall include the cost of telephone service, water, sewerage, and garbage collection fees in the overall allowance, even though these utilities do not, by themselves, entitle the household to use the standard utility allowance. The State may elect to establish a shelter insurance deduction to be added to the standard utility deduction. If a household is not entitled to the standard utility allowance, it may claim actual utility expenses for any utility which it does pay separately. A household not claiming the utility standard deduction may claim the shelter insurance standard alone or the actual cost of the shelter insurance.

(s) *Optional project procedure: Categorical eligibility for applicants determined eligible for AFDC.* (1) Households applying for both the Food stamp and AFDC Programs in approved project areas in this demonstration project shall be considered automatically eligible for the Food Stamp Program if they are determined eligible for the AFDC program: *Provided,* That the State agency has submitted documentation that the potential gross income limits for AFDC households at 150 percent of the need standard do not exceed the Food Stamp Program gross income limits set forth in § 273.9(a)(1). Benefits shall be calculated according to standard procedures as set forth in § 273.10.

(2) For households applying for both programs in approved demonstration project areas which are determined ineligible for the AFDC program and for all other households not mentioned in paragraphs (A) and (C) of § 273.10(e)(2)(i), the State agency shall compare a household's gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of § 273.10, to the monthly income eligibility standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month. The State agency shall also apply to these applicant households the resource standards of eligibility as set forth in § 273.8 or as modified in other paragraphs of this section.

(t) *Optional project procedure: Boarders—determining the cost of doing business.* After determining the income received from the boarders, the State agency shall exclude that portion of the boarder payment which is a cost of doing business. The cost of doing business shall be equal to either of the following procedures provided that the amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals:

(1) The cost of providing room and/or board for the number of people in the boarder group according to the table provided below. (The cost of board shall be equal to the Thrifty Food Plan amount for the number of

people in the boarder group. The 2/3 board amount shall be allowed if only two meals per day are provided to the boarder group.) If the actual room/board payment is less than the standard, only the amount actually paid would be allowed.

NUMBER OF PEOPLE IN BOARDER GROUP

	1	2	3	4	5	6+
Room only	43	78	112	142	169	203
Board only	70	128	183	233	277	332
Room and board	113	206	295	375	446	535
2/3 board	47	85	122	155	185	221

(2) The actual documented cost of providing room and meals, or 50 percent of the gross payment received. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded. If the boarder household resides in the same dwelling as the provider household, the cost of doing business may not exceed the difference between the actual total payment for an item and any public assistance (PA) allowances granted to the provider for that item.

[Amdt. 199, 47 FR 536, Jan. 5, 1982]

§ 282.19 Simplified Application Demonstration Project.

(a) *Purpose.* This section establishes procedures under which the Simplified Application Demonstration Project shall operate. This project is authorized by subsection 17(d) of the Food Stamp Act of 1977, as amended. Under this project, households containing members receiving AFDC, SSI or Medicaid benefits which wish to receive food stamp benefits will have their eligibility for food stamps determined using a simplified application procedure. A separate food stamp application will not be required. Food stamp eligibility will be determined using information contained in the AFDE, SSI or Medicaid application, whichever is appropriate. For the purpose of this rulemaking, the term "application" means both the actual application for assistance and any information pertaining to household eligibility which is subsequently received. Such households will be considered to have satisfied the food stamp resource requirements on the basis of their eligibility for these other programs. They will, however, have to meet the appropriate food stamp income eligibility standards and non-financial eligibility requirements. To further simplify program administration, benefits provided to such households could be standardized amounts by category of assistance and household size. The purpose of the Simplified Application Project is to test whether such procedures will improve the efficiency of program administration and benefit delivery. Each project will be operated for up to 15 months.

(b) *Effect of project on normal program requirements.* Subsection 17(d) established certain specific project requirements which, for the purposes of the project, override normal requirements contained in other sections of the Act. For the purpose of operating the Simplified Application Demonstration Project, the following provisions of the Act shall be deemed modified or inapplicable.

(1) Section 5(a) is modified to the extent that certain households, at the sponsoring agency's option, which contain members receiving AFDC, SSI or Medicaid benefits, will not have to make separate application for food stamp benefits. Once such households indicate a desire to receive food stamps, their eligibility will be determined using the information contained in their application for assistance for AFDC, SSI, or Medicaid benefits.

(2) The income and resource requirements prescribed under section 5 (d) through (g) of the law will be inapplicable. Project eligible households which have met the resource requirements of other programs will be deemed to have satisfied the food stamp resource requirements. The definition of gross income prescribed by the appropriate categorical aid program will be used instead of the food stamp income definition. Net income will be determined by subtracting the appropriate deductions for each size and category of household. This would include the current standard deduction for all households; an average excess shelter/dependent care deduc-

tion for households not containing a qualified elderly or disabled member; an average uncapped excess shelter deduction, an average dependent care deduction and an average medical deduction for households containing a qualified elderly or disabled member; and an average or actual earned income deduction for households containing members with earnings. Average deduction amounts for each size and category of household will be determined by the sponsoring agency using recent historical data on deductions claimed by such households.

(3) Because subsection 17(d) allows the use of standardized allotments, subsection 8(a), related to the value of allotments, shall be inapplicable. Allotments provided to project eligible households may be standardized amounts, based on factors such as households size, income and deductions for the various categories and sizes of project eligible households.

(c) *Regulatory requirements.* (1) All current Food Stamp Program regulations, except where inconsistent with any rules governing this project, or expressly waived by this regulation, shall be in effect during the operation of this project.

(2) Certification Periods. At the option of the sponsoring agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household will be required to complete a modified application and provide additional information as requested. The State agency shall verify such information in accordance with normal verification procedures used at food stamp recertifications. If the household fails to comply with the interim review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with § 273.13, Notice of Adverse Action.

(d) *Areas of operation.* The Simplified Application Demonstration Project shall be operated in a maximum of two States and 14 political subdivisions. Project operators shall be selected by FNS based on proposals submitted in response to the Request for Proposal (RFP).

(e) *Project eligible households.* Each sponsoring agency shall decide which of the following categories of households will be eligible to participate in the project.

(1) Households all of whose members receive AFDC benefits under part A of title IV of the Social Security Act.

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act.

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act.

(4) Households each of whose members receive one of the following: AFDC, SSI, or Medicaid benefits (multiple-benefit households).

(5) Households only some of whose members receive AFDC, SSI or Medicaid benefits (mixed households).

(f) *Household notification.* (1) All certified project eligible households residing in the selected project sites shall be provided with a notice, prior to project inauguration, informing them of the project and its requirements. If households are to be converted to a standardized benefit amount, the notice will also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. This notice shall meet the requirements of a notice of adverse action, as set forth in § 273.13(a)(2).

(2) Prior to the last month of project operation, the State agency shall notify all project participants of the termination of the project and shall establish a recertification date based on a timetable agreed to by FNS.

(g) *Application processing procedures.* (1) The sponsoring agency shall develop a mechanism which will allow project eligible households to indicate their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their AFDC, SSI, or Medicaid application will be used in making their food stamp eligibility determination.

(2) The sponsoring agency may use simplified application procedures only for those households containing members eligible to receive AFDC, SSI, or Medicaid benefits. Households jointly applying for food stamps and AFDC, SSI, or Medicaid benefits must have both determinations made within the 30-day food stamp processing period if simplified procedures are to be used. If a household's eligibility for AFDC, SSI or Medicaid cannot be established within the 30-day period, normal food stamp application, certification and benefit determination procedures would have to be used and benefits would have to be issued within 30 days if the household is eligible. Generally, households qualifying for expedited service, which are jointly applying for AFDC, SSI or Medicaid, would have to be certified for food stamps using normal expedited procedures. However, if the project sponsor can process the application of a household for categorical assistance within the expedited period of the food stamp rules, it may include such a household in the project.

(h) *Food stamp program eligibility.* Project eligible households shall have their food stamp eligibility determined using the following criteria:

(1) *Resources*—Based on their receipt of AFDC, SSI, or Medicaid project eligible households will be considered to have satisfied the resource requirements.

(2) *Income.* (i) Project eligible households will be subject to the appropriate food stamp income eligibility standard.

(ii) Gross income shall be determined using the gross income definition of the categorical aid program, i.e., AFDC, SSI or Medicaid, under which the household is already receiving benefits plus any categorical benefits received. However, if child support payments received by the household are transferred to the State agency, such monies shall not be included in the gross income calculation.

(iii) Net income shall be determined by subtracting from gross income appropriate deductions. For each category and household size, such appropriate deductions shall include:

(*a*) A standard deduction for all households;

(*b*) An average excess shelter/dependent care deduction for households not containing qualified elderly or disabled members;

(*c*) An average uncapped shelter deduction, an average dependent care deduction, and an average medical expense deduction for households containing a qualified elderly or disabled member; and

(*d*) For households containing earners, an earned income deduction based either on averages or the normal earned income deduction. Average deductions shall be developed using recent historical information on deductions claimed by households in each category and size.

(3) Non-financial eligibility criteria—All non-financial food stamp eligibility criteria shall be applicable.

(i) *Benefit levels.* (1) Benefits for project eligible households shall be based on either the appropriate State standard of need (maximum aid payment) or gross income as determined for the appropriate categorical aid program.

(2) Separate benefit categories shall be developed to consider source of categorical aid, household size, and the presence of absence of either earned income or an elderly or disabled household member.

(3) The methodology to be used in developing benefit levels shall be determined by the sponsoring agency but shall be subject to FNS approval. Consideration shall be given to the standard and average deductions normally provided to such categories of households. The standardized allotment for each category and subcategory, by household size, shall be no less than the average allotment would have been were the project not in operation.

(4) With FNS approval, sponsors may develop an alternate methodology for determining standardized allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or standardized allotments impractical.

(5) FNS may require sponsors to revise their standardized allotments during the course of the project to reflect changes in items such as the Thrifty Food Plan, the benefit reduction rate, or benefit levels in AFDC or SSI.

(j) *Quality control.* (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures based on project requirements. FNS has determined that this project significantly modifies rules for determining household eligibility and allotments; therefore, these cases will be excluded from the State's active and negative case error rates, payment error rate, and underissuance error rate.

(2) The State's error rate during the demonstration will be based on the review of cases not included in the demonstration and, at the option of the project sponsor, either:

(i) The error rate(s) determined for the included cases during FY 83; or

(ii) The error rate(s) determined for the included cases during FY 83, except such error rate(s) shall be adjusted to reflect changes in the error rates for non-project eligible cases between FY 83 and 84.

(3) The error rate imputed to project eligible cases shall be applicable to the total issuances provided to participating food stamp households which are included in the demonstration.

(k) *Funding.* Sponsoring agencies shall be reimbursed for project related costs at the normal matching rates prescribed in Section 16 of the Food Stamp Act.

(l) *Monitoring and evaluation.* FNS shall establish procedures for monitoring sponsoring agencies' operation and administration of the Simplified Application Demonstration Project. The evaluation of the project shall be conducted by an independent contractor. The sponsoring agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

(91 Stat. 958 (7 U.S.C. 2011-2029); sec. 1330 of Pub. L. 97-98, 95 Stat. 1290 (7 U.S.C. 2026))

[Amdt. 219, 48 FR 45009, Sept. 30, 1983]

PART 284—PROVISION OF A NUTRITION ASSISTANCE PROGRAM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

Sec.
284.1 General purpose and scope.
284.2 Authority.
284.3 Memorandum of understanding.
284.4 Failure to comply.
284.5 Technical assistance.

AUTHORITY: 90 Stat. 263-279 (48 U.S.C. 1681 note); 91 Stat. 958 (7 U.S.C. 2011-2027); 94 Stat. 3479-3480.

SOURCE: Amdt. 203, 47 FR 28068, June 29, 1982, unless otherwise noted.

§ 284.1 General purpose and scope.

This part describes the general terms and conditions under which Food Stamp Program funds shall be provided by the Food and Nutrition Service (FNS) to the Commonwealth of Northern Mariana Islands (CNMI) for the purpose of providing a nutrition assistance program for needy persons. The CNMI's program for nutrition assistance shall be targeted to the most needy and shall assure more nutritious diets, provide work incentives, develop CNMI self-sufficiency, and stimulate economic development and local food production. Specific program requirements will be negotiated between FNS and the CNMI and documented in a memorandum of understanding.

§ 284.2 Authority.

(a) The Secretary shall, consistent with the memorandum of understanding required by § 284.3, make a nutrition assistance program available to the CNMI.

(b) FNS has the authority to approve or disapprove the memorandum of understanding or any amendments thereto. FNS approval of the memorandum of understanding or any amendments thereto shall be based, in part, on an assessment that the nutrition assistance program, as defined in the memorandum of understanding or amendment, is:

(1) Sufficiently detailed to permit analysis and review;

(2) Adequately targeted to those with the lowest incomes;

(3) Supported by the assessment of the people's food and nutrition needs;

(4) Effective in its impact on the diets of needy persons;

(5) Reasonable in terms of the budget requested; and

(6) Effective and efficient in the use of Federal funds.

(c) Unless the memorandum of understanding is approved by FNS, no nutrition assistance funds will be provided by FNS to the CNMI.

(d) FNS may recover from the CNMI through offsets to funding during any fiscal year, funds previously paid to the CNMI and later determined by the Secretary to have been overpayments. Funds which may be recovered include, but are not limited to:

(1) Costs not included in the approved memorandum of understanding;

(2) Unallowable costs discovered in audit or investigation findings; and

(3) Amounts owed to FNS which have been billed to the CNMI and which the CNMI has failed to pay without cause acceptable to FNS.

(e) Those provisions of the Food Stamp Program regulations with which the nutrition assistance program described in the memorandum of understanding approved by FNS does not comply are hereby waived.

§ 284.3 Memorandum of understanding.

(a) Nutrition assistance for any fiscal year in the CNMI shall be based upon the memorandum of understanding as approved by FNS. This memorandum of understanding shall be submitted for FNS approval prior to the time the program created by it is to be implemented. Amendments to the memorandum of understanding may be submitted by either party to the other for approval at any time during a fiscal year.

(b) The memorandum of understanding shall include the following:

(1) Designation of a single agency which shall be responsible for the administration, or supervision of the administration of the nutrition assistance program.

(2) A description of the needy persons residing in the CNMI and an assessment of the food and nutrition needs of these persons. The description and assessment shall demonstrate that the nutrition assistance program is directed toward the most needy persons in the CNMI.

(3) A description of the program for nutrition assistance including:

(i) A description of the eligibility standards and the nutrition assistance to be provided to needy persons, and any agencies designated to provide such assistance.

(ii) A description of how eligibility will be determined and the amount of benefits to be provided to individuals and if the benefits vary, the basis of such variations and how the variations will be determined;

(iii) A description of the certification process;

(iv) A description of plans for program monitoring and corrective action procedures;

(v) A description of program issuance and accounting procedures;

(vi) Agreement to comply with the provisions and requirements of Part 3015 of this title and other specific procedures, reporting and/or recordkeeping requirements as FNS may require.

(4) A budget and an estimate of the amount of expenditures necessary for the provision of the nutrition assistance and related administrative expenses;

(5) Other information as FNS may require;

(6) CNMI's agreement to provide an audit of expenditures in compliance with the requirements in Part 3015 of this title at least once every two years. The findings of such audit shall be reported to FNS no later than 120 days from the end of the fiscal year in which the audit is made; and

(7) CNMI's agreement to provide FNS, within 120 days of the end of each fiscal year, a statement of:

(i) Whether the grant funds received for that fiscal year exceeded the valid obligations made that year for which payment is authorized, and if so, by how much, and

(ii) Such additional related information as FNS may require.

§ 284.4 Failure to comply.

Funds may be withheld in whole or in part, or denied, if there is a substantial failure by the CNMI to comply with the requirements of these regulations or to comply with program requirements detailed in the memorandum of understanding. FNS shall notify the CNMI that further payments shall not be made until FNS is satisfied that there will no longer be any such failure to comply.

§ 284.5 Technical assistance.

FNS may extend technical assistance to the CNMI to assist in the development of the memorandum of understanding and in the operation of the program detailed in the memorandum of understanding.

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

Sec.
285.1 General purpose and scope.
285.2 Funding.
285.3 Plan of operation.
285.4 Approval.
285.5 Records and reports.
285.6 Audits.
285.7 Failure to comply.
285.8 Review.
285.9 Technical assistance.
285.10 Termination of the Food Stamp Program in the Commonwealth of Puerto Rico.

AUTHORITY: 90 Stat. 263-279 (48 U.S.C. 1681 note) 91 Stat. 958 (7 U.S.C. 2011-2029).

SOURCE: Amdt. 209, 47 FR 32409, July 27, 1982, unless otherwise noted.

§ 285.1 General purpose and scope.

This part describes the general terms and conditions under which grant funds shall be provided by the Food and Nutrition Service (FNS) to the government of the Commonwealth of Puerto Rico for the purpose of designing and conducting a nutrition assistance program for needy persons. The Commonwealth of Puerto Rico is authorized to establish eligibility and benefit levels for the nutrition assistance program. In addition, with FNS approval, the Commonwealth of Puerto Rico may employ a small proportion of the grant funds to finance projects that the Commonwealth of Puerto Rico believes likely to improve or stimulate agriculture, food production, and food distribution.

§ 285.2 Funding.

(a) FNS shall, consistent with the plan of operation required by § 285.3 of this part, and subject to availability of funds, provide nutrition assistance grant funds to the Commonwealth of Puerto Rico to cover 100 percent of the expenditures related to food assistance provided to needy persons and 50 percent of the administrative expenses related to the food assistance. The amount of the grant funds provided to the Commonwealth of Puerto Rico shall not exceed $825,000,000 for each fiscal year except that the amount payable to Puerto Rico for final quarter of fiscal year 1982 shall be $206,500,000.

(b) FNS shall, subject to the provisions in §§ 285.4 and 285.7 in this part, and limited by the provisions of paragraph (a) of this section, pay to the Commonwealth of Puerto Rico for the applicable fiscal year, the amount estimated by the Commonwealth of Puerto Rico pursuant to § 285.3(b)(4). Payments shall be made no less frequently than on a monthly basis prior to the beginning of each month consistent with the Treasury Fiscal Requirement Manual, Volume I, part 6, section 2030; these letters of credit shall be drawn on an as-needed basis. The amount shall be reduced or increased to the extent of any prior overpayment or underpayment which FNS determines has been made and which has not been previoulsy adjusted. The payment(s) received by the Commonwealth of Puerto Rico for a fiscal year shall not exceed the total authorized for the grant, or the total cost for the nutrition assistance program eligible for funding, whichever is less, for that fiscal year.

(c) FNS may recover from the Commonwealth of Puerto Rico, through offsets to funding during any fiscal year, funds previously paid to the Commonwealth of Puerto Rico and later determined by the Secretary to have been overpayments. Funds which may be recovered include, but are not limited to:

(1) Costs not included in the approved plan of operation;

(2) Unallowable costs discovered in audit or investigation findings;

(3) Funds allocated to the Commonwealth of Puerto Rico which exceeded expenditures during the fiscal year for which the funds were authorized; or

(4) Amounts owed to FNS as a result of the nutrition assistance grant which have been billed to the Commonwealth of Puerto Rico and which the Commonwealth of Puerto Rico has failed to pay without cause acceptable to FNS.

(d) Funds for payment of any prior fiscal year expenditures shall be claimed from the funding for that prior year. The payment of funds shall not exceed the authorization for that prior fiscal year.

[Amdt. 209, 47 FR 32409, July 27, 1982, as amended by Amdt. 243, 49 FR 49585, Dec. 21, 1984]

§ 285.3 Plan of operation.

(a) To receive payments for any fiscal year the Commonwealth of Puerto Rico shall have a plan of operation for that fiscal year approved by FNS. The Commonwealth of Puerto Rico shall submit the initial plan of operation, for fiscal years 1982 and 1983, no later than April 1, 1982. Each subsequent plan of operation shall be sumitted for FNS approval by the July 1 preceding the fiscal year for which the plan of operation is to be effective.

(b) The plan of operation shall include the following information:

(1) Designation of a single agency which shall be responsible for administration, or supervision of the administration, of the nutrition assistance program.

(2) A description of the needy persons residing in the Commonwealth of Puerto Rico and an assessment of the food and nutrition needs of these persons. The description and assessment shall demonstrate that the nutrition assistance program is directed toward the most needy persons in the Commonwealth of Puerto Rico.

(3) A description of the program for nutrition assistance including:

(i) A general description of the nutrition assistance to be provided the needy persons who will receive assistance, and any agencies designated to provide such assistance;

(ii) To the extent grant funds are not used for direct nutrition assistance payments to needy persons, the plan of operation must demonstrate that the grants funds will provide nutrition assistance benefiting needy persons in the Commonwealth of Puerto Rico;

(iii) If change in an amount of less than 1-dollar is required, the Commonwealth of Puerto Rico may allow eligible households to receive the change in cash. At no time may cash change be in excess of 99 cents. Food stores may not engage in a series of transactions of less than one dollar in order to provide the same customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(4) A budget and an estimate of the monthly amounts of expenditures necessary for the provision of the nutrition assistance and related administrative expenses up to the monthly amounts provided for payment in § 285.2.

(5) Other reasonably related information which FNS may request.

(6) An agreement signed by the governor or other appropriate official to conduct the nutrition assistance program in accordance with the FNS-approved plan of operation and in compliance with all pertinent Federal rules and regulations. The Commonwealth of Puerto Rico shall also agree to comply with any changes in Federal law and regulations.

(c) Any amendments to those provisions of the plan of operation specified in paragraph (b) of this section, must be submitted to FNS for approval.

[Amdt. 209, 47 FR 32409, July 27, 1982, as amended by Amdt. 239, 48 FR 23805, May 27, 1983; Amdt. 243, 49 FR 49585, Dec. 21, 1984]

§ 285.4 Approval.

(a) FNS shall approve or disapprove the initial plan of operation for fiscal years 1982 and 1983 no later than 30 days from the date the Commonwealth of Puerto Rico submits such plan. Thereafter, FNS shall approve or disapprove any plan of operation no later than August 1 of the year of its submission. FNS approval of the plan of operation shall be based on an assessment that the nutrition assistance program, as defined in the plan of operation, is:

(1) Sufficient to permit analysis and review;

(2) Reasonably targeted to the most needy persons as defined in the plan of operation;

(3) Supported by an assessment of the food and nutrition needs of needy persons;

(4) Reasonable in terms of the funds requested;

(5) Structured to include safeguards to prevent fraud, waste, and abuse in the use of grant funds; and

(6) Consistent with all applicable Federal laws.

(b) FNS shall approve or disappove any amendments to those provisions of the plan of operation specified in § 285.3(b). If FNS fails either to approve or deny the amendment, or to request additional information within 30 days, the amendment to the plan of operation is approved. If additional information is requested, the Commonwealth of Puerto Rico shall provide this as soon as possible, and FNS shall approve or deny the amendment to the plan of operation. Payment schedules and other program operations may not be altered until an amendment to the plan of operation is approved. The Commonwealth of Puerto Rico shall, for informational purposes, submit to FNS any amendments to those provisions of the plan of operation not specified in § 285.3(b). Such submittal shall be made at least 30 days prior to the effective date of the amendment. If circumstances warrant a waiver of the 30-day requirement, the Commonwealth of Puerto Rico shall submit a waiver request to FNS for consideration. Should FNS determine that such an amendment relates to the provisions of § 285.3(b), FNS approval as established above will be necessary for the amendment to be implemented.

(c) FNS may approve part of any plan of operation or amendment submitted by the Commonwealth of Puerto Rico contingent on appropriate action by the Commonwealth of Puerto Rico with respect to the problem areas in the plan of operation.

(d) If all or part of the plan of operation is disapproved, FNS shall notify the appropriate agency in the Commonwealth of Puerto Rico of the problem area(s) in the plan of operation and the actions necessary to secure approval.

(e) In accordance with the provisions of § 285.7, funds may be withheld or denied when all or part of a plan of operation is disapproved.

§ 285.5 Records and reports.

The Commonwealth of Puerto Rico shall follow procedures, and maintain and submit to FNS such records and reports, as agreed upon by the Commonwealth of Puerto Rico and FNS, for the nutrition assistance program as outlined in the plan of operation. Such records and reports shall, at a minimum, be prepared in accordance with Part 3015 of this title.

§ 285.6 Audits.

(a) The Commonwealth of Puerto Rico shall provide an audit of expenditures in compliance with the requirements in Part 3015 of this title at least once every two years. The findings of such audit shall be reported to FNS no later than 120 days from the end of each fiscal year in which the audit is made.

(b) Within 120 days of the end of each fiscal year, the Commonwealth of Puerto Rico shall provide FNS with a statement of: (1) Whether the grant funds received for that fiscal year exceeded the valid obligations made that year for which payment is authorized, and if so, by how much, and (2) such additional related information as FNS may require.

§ 285.7 Failure to comply.

(a) Grant funds may be withheld in whole or in part, or denied if there is a substantial failure by the Commonwealth of Puerto Rico to comply with the requirements of § 285.6, or to bring into compliance a plan of operation disapproved by FNS, or to comply with program requirements detailed in the plan of operation approved for that fiscal year. (For example, funds shall be paid to the Commonwealth of Puerto Rico to cover only the costs of the part or parts of the plan of operation receiving FNS approval. Withheld payments shall be paid when the unapproved part(s) of the plan are modified and approved.) FNS shall notify the Commonwealth of Puerto Rico that further payments shall not be made until FNS is satisfied that there will no longer be any such failure to comply.

(b) Upon a finding of a substantial failure to comply with the requirements of § 285.6 or the plan of operation, FNS may, in addition to or in lieu of actions taken in accordance with paragraph (a) of this section, refer the matter to the Attorney General with a request that injunctive relief be sought from the appropriate district court of the United States to require compliance with these regulations by the Commonwealth of Puerto Rico.

§ 285.8 Review.

FNS shall provide for the review of the programs for provision of nutrition assistance for which payments are made under Part 285.

§ 285.9 Technical assistance.

FNS may provide technical assistance to the Commonwealth of Puerto Rico to assist in the development of the plan of operation, or in the operation of the program detailed in the plan of operation, or to help provide for responsible management of the funds provided or made available to Puerto Rico for nutrition assistance.

§ 285.10 Termination of the Food Stamp Program in the Commonwealth of Puerto Rico.

(a) *Retention of funds collected from claims.* The Commonwealth of Puerto Rico shall retain the value of funds collected for both fraud and nonfraud claims. This amount includes the total value of allotment reductions to collect fraud claims but does not include the value of the reduction of allotments resulting from a disqualification. The Commonwealth of Puerto Rico's letter of credit will be amended on a quarterly basis to reflect the Commonwealth of Puerto Rico's retention of 25 percent of the value of those nonfraud claims which did not result from error on the part of the State agency and 50 percent of the value of fraud claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

(b) The Commonwealth of Puerto Rico shall submit monthly a Form FNS-209, Status of Claims Against Households, to detail its activities relating to claims against households. This report is due no later than 30 days after the end of each calendar month in which the Commonwealth of Puerto Rico undertakes claims-related activities. In addition to reporting the amount of funds recovered from fraud claims each month on Form FNS-209, the Commonwealth of Puerto Rico shall also report these amounts on other letter of credit documents as required. In accounting for fraud claims collections, the Commonwealth of Puerto Rico shall include cash repayments and the value of allotments recovered or offset against restoration of lost benefits. However, the value of allotments reduced during periods of disqualification shall not be considered recovered allotments and shall not be used to offset a fraud claim. In addition, the Commonwealth of Puerto Rico shall establish controls to ensure that officials responsible for fraud determinations will not benefit from the Commonwealth of Puerto Rico's share of recoveries.

(c) In cases where FNS has billed the Commonwealth of Puerto Rico for negligence, any amounts collected from households for which overissuances were caused by the Commonwealth of Puerto Rico's negligence will be credited by FNS. When submitting these payments, Puerto Rico shall include a note in the remarks section of the FNS-209 which shows the amount that should be credited against the Commonwealth of Puerto Rico's bill.

[Amdt. 248, 48 FR 16832, Apr. 19, 1983]

SUBCHAPTER D—GENERAL REGULATIONS

PART 295—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Sec.
295.1 General statement.
295.2 Organizational description.
295.3 Informational and educational publications.
295.4 Nutrition education and training status reports.
295.5 Program evaluation status reports.
295.6 Program statistical reports.
295.7 Public inspection and copying.
295.8 Indexes.
295.9 Requests.
295.10 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR 1.1-1.16.

SOURCE: 48 FR 15226, Apr. 8, 1983, unless otherwise noted.

§ 295.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1—1.16, and Appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations as implemented by the regulations in this part, govern the availability of records of FNS to the public.

§ 295.2 Organizational description.

The description of the central and field organization of FNS is published as a notice in the FEDERAL REGISTER and may be revised from time to time in like manner. Such description contains a listing of FNS Washington and field organizational units and their functions.

§ 295.3 Informational and educational publications.

FNS publishes a wide variety of informational and educational periodicals, pamphlets, brochures, leaflets, guides, and educational aids explaining the operation of FNS food assistance programs. For more information concerning FNS publications and how to obtain them, write the Director, Office of Public Information, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

§ 295.4 Nutrition education and training status reports.

Upon completion, FNS prepares summaries containing objectives, methodology, and findings from nutritional training and educational studies, surveys, and projects, awarded through grants, cooperative agreements or contracts with States, nonprofit institutions, universities, and private industry. A limited number of current status reports on completed studies is available for free public distribution. Write the Director, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria VA 22302.

§ 295.5 Program evaluation status reports.

FNS also publishes summaries of objectives and findings of completed studies and projects concerning evaluation of FNS food assistance programs. While supplies last, a copy of the current status report on completed studies may be obtained by writing the Director, Office of Analysis and Evaluation, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

§ 295.6 Program statistical reports.

Current and historical information on FNS food assistance program size, monetary outlays, geographic distribution, racial and ethnic participation rates, and other data is published throughout the year. Limited supplies are available for public distribution upon request. Write the Director, Management Information Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

§ 295.7 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Such materials maintained by FNS may be inspected and copied during regular office hours (currently 8:30 a.m. to 5 p.m.) at the following FNS, Alexandria, VA offices.

(a) Child Care and Summer Program records-Director, Child Care and Summer Programs Division, Room 413, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302.

(b) School Program records-Director, School Programs Division, Room 512, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302.

(c) Food Distribution Program records-Director, Food Distribution Division, Room 502, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302.

(d) Food Stamp Program records-Director, Program Planning, Development, and Support Division, Room 711, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302.

(e) Supplemental Food Program records-Director, Supplemental Food Programs Division, Room 407, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302.

§ 295.8 Indexes.

5 U.S.C. 552(a)(2) also requires an index of the materials required to be made available for public inspection and copying, be published quarterly, Copies of this Index for FNS materials will be maintained for public inspection and copying during regular office hours in FNS Library, Room 1002, 3101 Parker Center Drive, Alexandria, Va. 22302. Free copies of the current index may be obtained by writing or visiting the following FNS offices.

(a) Records Management Officer, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Va. 22302.

(b) Director, Financial Management, Food and Nutrition Service, USDA, Mercer Corporate Park, CN 02150 Trenton, NJ 08650.

(c) Director, Financial Management, Food and Nutrition Service, USDA, 1100, Spring St., NW, Atlanta, GA 30367.

(d) Director, Financial Management, Food and Nutrition Service, USDA, 50 E. Washington Street, Chicago, Illinois 60602.

(e) Director, Financial Management, Food and Nutrition Service, USDA, 1100 Commerce St., Dallas, Texas 75242.

(f) Director, Financial Management, Food and Nutrition Service, USDA, 550 Kearney St., San Francisco, CA 94108.

(g) Director, Financial Management, Food and Nutrition Service, USDA, 33 North Avenue, Burlington, MA 01803.

(h) Director, Financial Management, Food and Nutrition Service, USDA, 2420 W. 26th Ave., Denver, CO 80211.

§ 295.9 Requests.

Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with USDA Administrative Regulations 7 CFR 1.3(a) and addressed to the appropriate FNS official listed below:

(a) Child Care and Summer Program records—Director, Child Care and Summer Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

(b) School Program records—Director, School Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

(c) Food Distribution Program records—Director, Food Distribution Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

(d) Food Stamp Program records—Director, Program Planning, Development, and Support Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

(e) Supplemental Food Program records—Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

If the requester is unable to determine the official to whom his request should be addressed, he should address it to: Freedom of Information Officer, Administrative Services Division, 3101 Park Center Drive, Alexandria, VA 22302, who will refer such requests to the appropriate official. Authority is hereby designated to these officials to make determinations in accordance with USDA Administrative Regulations 7 CFR 1.4(c).

§ 295.10 Appeals.

Any person whose request for records is denied shall have the right to appeal that denial in accordance with USDA Administrative Regulations 7 CFR 1.3(e). All appeals shall be addressed to: Administrator, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

PARTS 296-299—[RESERVED]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Table
List of CFR Sections Affected

BEST COPY AVAILABLE

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Table of CFR Titles and Chapters

(As of December 13, 1985)

Title 1—General Provisions

Chap.	
I	Administrative Committee of the Federal Register (Parts 1-49)
II	Office of the Federal Register (Parts 50-299)
III	Administrative Conference of the United States (Parts 300-399)
IV	Miscellaneous Agencies (Parts 400-499)

Title 2—[Reserved]

Title 3—The President

	Proclamations
	Executive Orders
	Other Presidential Documents
I	Executive Office of the President (Parts 100-199)

Title 4—Accounts

I	General Accounting Office (Parts 1-99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
III	General Accounting Office (CASB) (Parts 300-499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1-1199)
II	Merit Systems Protection Board (Parts 1200-1299)
III	Office of Management and Budget (Parts 1300-1399)
IV	Advisory Committee on Federal Pay (Parts 1400-1499)
V	The International Organizations Employees Loyalty Board (Parts 1500-1599)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
IX	Appalachian Regional Commission (Parts 1900-1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100-2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

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Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500-2599)

Title 6—[Reserved]

Title 7—Agriculture

Chap.	
	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25a)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210-299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
V	Agricultural Research Service, Department of Agriculture (Parts 500-599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600-699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800-2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200-2299)
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

Title 7—Agriculture—Continued

Chap.	
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600-2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700-2799)
XXIX	Office of Energy, Department of Agriculture (Parts 2900-2999)
XXX	Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100-3199)
XXXII	Office of Grants and Program Systems, Department of Agriculture (Parts 3200-3299)
XXXIV	Cooperative State Research Service, Department of Agriculture (Parts 3400-3499)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1-499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199)
II	Packers and Stockyards Administration, Department of Agriculture (Parts 200-299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

Title 10—Energy

I	Nuclear Regulatory Commission (Parts 0-199)
II	Department of Energy (Parts 200-699)
III	Department of Energy (Parts 700-999)
X	Department of Energy (General Provisions) (Parts 1000-1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1-9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1-199)
II	Federal Reserve System (Parts 200-299)
III	Federal Deposit Insurance Corporation (Parts 300-399)
IV	Export-Import Bank of the United States (Parts 400-499)

Title 12—Banks and Banking—Continued

Chap.	
V	Federal Home Loan Bank Board (Parts 500-599)
VI	Farm Credit Administration (Parts 600-699)
VII	National Credit Union Administration (Parts 700-799)
VIII	Federal Financing Bank (Parts 800-899)
XI	Federal Financial Institutions Examination Council (Parts 1100-1199)
XII	Depository Institutions Deregulation Committee (Parts 1200-1299)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1-199)
III	Economic Development Administration, Department of Commerce (Parts 300-399)
V	Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1-199)
II	Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-399)
V	National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

	SUBTITLE A—Office of the Secretary of Commerce (Parts 0-29)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 30-199)
II	National Bureau of Standards, Department of Commerce (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)
IV	Foreign-Trade Zones Board (Parts 400-499)
VI	Bureau of Industrial Economics, Department of Commerce (Parts 600-699)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)
XII	United States Travel Service, Department of Commerce (Parts 1200-1299)
XIII	East-West Foreign Trade Board (Parts 1300-1399)
XIV	Minority Business Development Agency (Parts 1400-1499)
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000-2099)

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Title 15—Commerce and Foreign Trade—Continued

Chap.	
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0-999)
II	Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1-199)
II	Securities and Exchange Commission (Parts 200-399)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1-399)
III	Delaware River Basin Commission (Parts 400-499)
VI	Water Resources Council (Parts 700-799)
VIII	Susquehanna River Basin Commission (Parts 800-899)
XIII	Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1-199)
II	United States International Trade Commission (Parts 200-299)
III	International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1-199)
II	Railroad Retirement Board (Parts 200-399)
III	Social Security Administration, Department of Health and Human Services (Parts 400-499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
V	Employment and Training Administration, Department of Labor (Parts 600-699)
VI	Employment Standards Administration, Department of Labor (Parts 700-799)
VII	Benefits Review Board, Department of Labor (Parts 800-899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900-999)

BEST COPY AVAILABLE

Title 21—Food and Drugs

Chap.	
I	Food and Drug Administration, Department of Health and Human Services (Parts 1-1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

I	Department of State (Parts 1-199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200-299)
III	Peace Corps (Parts 300-399)
IV	International Joint Commission, United States and Canada (Parts 400-499)
V	United States Information Agency (Parts 500-599)
VI	United States Arms Control and Disarmament Agency (Parts 600-699)
VII	Overseas Private Investment Corporation (Parts 700-799)
IX	Foreign Service Grievance Board Regulations (Parts 900-999)
X	Inter-American Foundation (Parts 1000-1099)
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199)
XII	United States International Development Cooperation Agency (Parts 1200-1299)
XIII	Board for International Broadcasting (Parts 1300-1399)
XIV	Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499)
XV	African Development Foundation (Parts 1500-1599)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1-999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)
III	National Highway Traffic Safety Administration, Department of Transportation (Parts 1300-1399)

Title 24—Housing and Urban Development

	SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)
	SUBTITLE B—Regulations Relating to Housing and Urban Development
I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)
II	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)

Title 24—Housing and Urban Development—Continued

Chap.	
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
VII	Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700-799)
VIII	Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800-899)
IX	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900-999)
X	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700-1799)
XI	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899)
XII	Office of Inspector General, Department of Housing and Urban Development (Parts 2000-2099)
XV	Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)
XX	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1-299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700-799)

Title 26—Internal Revenue

I	Internal Revenue Service, Department of the Treasury (Parts 1-699)

Title 27—Alcohol, Tobacco Products and Firearms

I	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299)

Title 28—Judicial Administration

Chap.	
I	Department of Justice (Parts 0-199)
III	Federal Prison Industries Inc., Department of Justice (Parts 300-399)
V	Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

	SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)
	SUBTITLE B—Regulations Relating to Labor
I	National Labor Relations Board (Parts 100-199)
II	Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200-299)
III	National Railroad Adjustment Board (Parts 300-399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400-499)
V	Wage and Hour Division, Department of Labor (Parts 500-899)
IX	Construction Industry Collective Bargaining Commission (Parts 900-999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)
XX	Occupational Safety and Health Review Commission (Parts 2200-2499)
XXV	Office of Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600-2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1-199)
II	Minerals Management Service, Department of the Interior (Parts 200-299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)
IV	Geological Survey, Department of the Interior (Parts 400-499)
VI	Bureau of Mines, Department of the Interior (Parts 600-699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)
	SUBTITLE B—Regulations Relating to Money and Finance

Title 31—Money and Finance: Treasury—Continued

Chap.	
I	Monetary Offices, Department of the Treasury (Parts 51-199)
II	Fiscal Service, Department of the Treasury (Parts 200-399)
IV	Secret Service, Department of the Treasury (Parts 400-499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799)

Title 32—National Defense

	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1-399)
V	Department of the Army (Parts 400-699)
VI	Department of the Navy (Parts 700-799)
VII	Department of the Air Force (Parts 800-1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900-1999)
XX	Information Security Oversight Office (Parts 2000-2099)
XXI	National Security Council (Parts 2100-2199)
XXIV	Office of Science and Technology Policy (Parts 2400-2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700-2799)
XXVIII	Office of the Vice President of the United States (Parts 2800-2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Corps of Engineers, Department of the Army (Parts 200-399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99)
	SUBTITLE B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100-199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200-299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400-499)

Title 34—Education—Continued

Chap.	
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599)
VI	Office of Postsecondary Education, Department of Education (Parts 600-699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700-799)

Title 35—Panama Canal

I	Panama Canal Regulations (Parts 1-299)

Title 36—Parks, Forests, and Public Property

I	National Park Service, Department of the Interior (Parts 1-199)
II	Forest Service, Department of Agriculture (Parts 200-299)
III	Corps of Engineers, Department of the Army (Parts 300-399)
IV	American Battle Monuments Commission (Parts 400-499)
V	Smithsonian Institution (Parts 500-599)
VII	Library of Congress (Parts 700-799)
VIII	Advisory Council on Historic Preservation (Parts 800-899)
IX	Pennsylvania Avenue Development Corporation (Parts 900-999)
X	Commission of Fine Arts (Parts 1000-1099)
XI	Architectural and Transportation Barriers Compliance Board (Parts 1100-1199)
XII	National Archives and Records Administration (Parts 1200-1299)

Title 37—Patents, Trademarks, and Copyrights

I	Patent and Trademark Office, Department of Commerce (Parts 1-199)
II	Copyright Office, Library of Congress (Parts 200-299)
III	Copyright Royalty Tribunal (Parts 300-399)
IV	Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce (Parts 400-499)

Title 38—Pensions, Bonuses, and Veterans' Relief

I	Veterans Administration (Parts 0-99)

Title 39—Postal Service

I	United States Postal Service (Parts 1-999)
III	Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I	Environmental Protection Agency (Parts 1-799)
V	Council on Environmental Quality (Parts 1500-1599)

BEST COPY AVAILABLE

Title 41—Public Contracts and Property Management

Chap.	
	SUBTITLE B—Other Provisions Relating to Public Contracts
50	Public Contracts, Department of Labor (Parts 50-1—50-999)
51	Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy Property Management Regulations (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management [Reserved]
	SUBTITLE E—Federal Information Resources Management Regulations System
201	Federal Information Resources Management Regulations (Parts 201-1—201-99)

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1-199)
III	Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Bureau of Reclamation, Department of the Interior (Parts 200-499)
II	Bureau of Land Management, Department of the Interior (Parts 1000-9999)

Title 44—Emergency Management and Assistance

I	Federal Emergency Management Agency (Parts 0-399)
IV	Department of Commerce and Department of Transportation (Parts 400-499)

73-010 O—86——24

Title 45—Public Welfare

Chap.	
	SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)
IV	Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400-499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)
VI	National Science Foundation (Parts 600-699)
VII	Commission on Civil Rights (Parts 700-799)
VIII	Office of Personnel Management (Parts 800-899)
X	Office of Community Services, Department of Health and Human Services (Parts 1000-1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100-1199)
XII	ACTION (Parts 1200-1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399)
XVI	Legal Services Corporation (Parts 1600-1699)
XVII	National Commission on Libraries and Information Science (Parts 1700-1799)
XVIII	Harry S Truman Scholarship Foundation (Parts 1800-1899)
XXI	Commission of Fine Arts (Parts 2100-2199)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1-199)
II	Maritime Administration, Department of Transportation (Parts 200-399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)
IV	Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0-199)
II	Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1-99)
2	Department of Defense (Parts 200-299)
3	Department of Health and Human Services (Parts 300-399)

Title 48—Federal Acquisition Regulations System—Continued

Chap.	
4	Department of Agriculture (Parts 400-499)
5	General Services Administration (Parts 500-599)
7	Agency for International Development (Parts 700-799)
8	Veterans Administration (Parts 800-899)
9	Department of Energy (Parts 900-999)
10	Department of the Treasury Acquisition/Procurement Regulation (Parts 1000-1099)
12	Department of Transportation (Parts 1200-1299)
13	Department of Commerce (Parts 1300-1399)
14	Department of the Interior (Parts 1400-1499)
15	Environmental Protection Agency (Parts 1500-1599)
18	National Aeronautics and Space Administration (Parts 1800-1899)
19	United States Information Agency (Parts 1900-1999)
22	Small Business Administration (Parts 2200-2299)
24	Department of Housing and Urban Development (Parts 2400-2499)
25	National Science Foundation (Parts 2500-2599)
28	Department of Justice (Parts 2800-2899)
29	Department of Labor (Parts 2900-2999)
44	Federal Emergency Management Agency (Parts 4400-4499)
61	General Services Administration Board of Contract Appeals (Parts 6100-6199)

Title 49—Transportation

	SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99)
	SUBTITLE B—Other Regulations Relating to Transportation
I	Research and Special Programs Administration, Department of Transportation (Parts 100-199)
II	Federal Railroad Administration, Department of Transportation (Parts 200-299)
III	Federal Highway Administration, Department of Transportation (Parts 300-399)
IV	Coast Guard, Department of Transportation (Parts 400-499)
V	National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
VI	Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)
VII	National Railroad Passenger Corporation (AMTRAK) (Parts 700-799)
VIII	National Transportation Safety Board (Parts 800-899)
IX	United States Railway Association (Parts 900-999)
X	Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

Chap.	
I	United States Fish and Wildlife Service, Department of the Interior (Parts 1-199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
V	Marine Mammal Commission (Parts 500-599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(As of December 13, 1985)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
Operations and Finance, Office of	7, XXX
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Air Force Department	32, VII
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI

Agency	CFR Title, Subtitle or Chapter
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII

Agency	CFR Title, Subtitle or Chapter
Economic Development Administration	13, III
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Home Loan Mortgage Corporation	1, IV
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I

Agency	CFR Title, Subtitle or Chapter
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, IV
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I

Agency	CFR Title, Subtitle or Chapter
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquistion Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50

Agency	CFR Title, Subtitle or Chapter
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48,25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III

Agency	CFR Title, Subtitle or Chapter
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A

Agency	CFR Title, Subtitle or Chapter
United States Customs Service	19, I
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 48, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

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Redesignation Table

In 7 CFR Chapter II, Subchapter C—Food Stamp Program was reorganized by documents published at 43 FR 43272, Sept. 22, 1978; 43 FR 47882, Oct. 17, 1978; 43 FR 54199, Nov. 21, 1978; and 43 FR 57543, Dec. 8, 1978.

The following redesignation table published at 43 FR 47881, Oct. 17, 1978, lists the former CFR section numbers and shows their relationship to the new section numbers.

[See footnote at end of table]

[See footnote at end of table]

Old	New
270.1(a)	270 [Reserved].
270.1(b)	271.1(a); 271.1(b).
270.2(a)	Deleted.
270.2(b)	Do.
270.2(c)	271.2.
270.2(d)	Deleted.
270.2(e)	271.2.
270.2(f)-(l)	Deleted.
270.2(m) and (n)	271.2.
270.2(o)	Deleted.
270.2(p)-(s)	271.2.
270.2(t)	Deleted.
270.2(u) and (v)	271.2.
270.2(w) and (x)	Deleted.
270.2(y)	271.2.
270.2(z) and (aa)	Deleted.
270.2(bb)	271.2.
270.2(cc) and (dd)	Deleted.
270.2(ee)	271.2.
270.2(ff)-(ll)	Deleted.
270 2(mm), (oo), and (pp)	271.2.
270.2(qq) and (rr)	Deleted.
270.2(ss)	271.2.
270.2(tt)	Deleted.
270.2(uu) and (vv)	271.2.
270.2(ww)-(yy)	Deleted.
270.2(zz)	271.2.
270.3(a)	271.3(a).
270.3(b)	271.4(a).
270.3(c)	272.4(a)(2).
270.4(a)	271.5(a).
270.4(b)	271.5(b).
270.4(c)	271.5(c).
270.4(d)	273.16(a) and (b); 271.5(b).
270.5(a)	271.3(b).
270.5(b)	271.6(b).
270.5(c)	Deleted.
271.1(a) [1]	281.1 [Reserved].
271.1(b)	272.1(a).
271.1(c)	272.1(b).
271.1(d)	272.7(a)
271.1(e)	273.2(f)(1)(iv) and 273.3.
271.1(f)	272.1(c).
271.1(g)	272.4(a)(1).
271.1(h) [1]	277 [Reserved].
271.1(i) [1]	272.2 [Reserved].
271.1(j)	271.4(a).
271.1(k) [1]	272.6(a)-(c) [Reserved].
271.1(l)	272.1(e).
271.1(m)	272.1(f) and 274.7.
271.1(n)(1)	273.13(a)(1) and (2).
271.1(n)(2)	273.13(b).
271.1(n)(3)	273.12(e)(1)(ii); (2)(ii).
271.1(n)(4)	273.15(k).
271.1(o)	273.15.
271.1(p)	273.17(i).
271.1(q)	273.17.
271.1(r)	272.1(d)
271.1(s)	272.1(g).
271.1(t) [1]	276 [Reserved].
271.2 [1]	277 [Reserved].
271.3(a)(1)	273.1(a) and (b).
271.3(a)(1)(i) and (ii)	273.2(d).
271.3(a)(1)(iii)	273.12.
271.3(a)(2)	274.10(b).
271.3(a)(3)	274.10(c).
271.3(a)(4)	274.10(d); 273.11(e); 273.1(f)(iv).
271.3(a)(5)	274.10(e).
271.3(b)	Deleted.
271.3(c)—Introductory paragraph	273.8(a) and 273.9(a).
271.3(c)(1)(i)	273.9(b).
271.3(c)(1)(i)(a)	273.9(b)(1)(i).
271.3(c)(1)(i)(b)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(a).
271.3(c)(1)(i)(c)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(a).
271.3(c)(1)(i)(d)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(b).
271.3(c)(1)(i)(e)	273.9(b)(2)(ii).
271.3(c)(1)(i)(f)	273.9(b)(2)(i).
271.3(c)(1)(i)(g)	273.9(b)(2)(v).
271.3(c)(1)(i)(h)	273.9(c)(1)(ii).
271.3(c)(1)(i)(i)	273.9(b)(2)(iv).
271.3(c)(1)(i)(j)	273.9(b)(2)(iv).
271.3(c)(1)(i)(k)	273.9(b)(2)(iii).
271.3(c)(1)(i)(l)	Deleted.
271.3(c)(1)(i)(m)	Do.
271.3(c)(1)(ii)(a)	273.9(c)(7).
271.3(c)(1)(ii)(b)	273.9(c)(10)(i).
271.3(c)(1)(ii)(c)	273.9(c)(1)(i).
271.3(c)(1)(ii)(d)	273.9(c)(2).

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[See footnote at end of table]

Old	New
271.3(c)(1)(ii)(e)	273.9(c)(8).
271.3(c)(1)(ii)(f)	273.9(c)(4).
271.3(c)(1)(ii)(g)	273.9(c)(10)(iii).
271.3(c)(1)(ii)(h)	273.9(c)(10)(iv).
271.3(c)(1)(iii)(a)	273.9(d)(2).
271.3(c)(1)(iii)(b)	Deleted.
271.3(c)(1)(iii)(c)	Do.
271.3(c)(1)(iii)(d)	273.9(d)(3).
271.3(c)(1)(iii)(e)	Deleted.
271.3(c)(1)(iii)(f)	273.9(c)(3).
271.3(c)(1)(iii)(g)	Deleted.
271.3(c)(1)(iii)(h)	273.9(d)(4).
271.3(c)(2)(i)–iv)	273.10(c).
271.3(c)(3)	273.9(a).
271.3(c)(4)(i)	273.8(b).
271.3(c)(4)(ii)	273.8(c).
271.3(c)(4)(iii)	273.8(e).
271.3(c)(4)(iv)	273.8(g).
271.3(d)	273.7.
271.3(e)	273.3.
271.3(f)	Deleted.
271.4(a)(1)	273.2(k).
271.4(a)(2)(i)	273.2(a) and (b).
271.4(a)(2)(ii)	273.2(e).
271.4(a)(2)(iii)	273.2(f); 273.2(i)(4)(i).
271.4(a)(3)(i)	273.2(g); 273.10(g)(1); 273.2(h)(2).
271.4(a)(3)(ii) Introductory paragraph.	273.14(a).
271.4(a)(3)(ii)(a)	273.14(b).
271.4(a)(3)(ii)(b)	273.14(e).
271.4(a)(3)(ii)(c)	273.14(c).
271.4(a)(3)(ii)(d)	273.14(d).
271.4(a)(3)(ii)(e)	273.14(f).
271.4(a)(4)	273.10(f).
271.4(a)(5)	273.19.
271.4(a)(6)	273.10(g)(3).
271.4(a)(7) [1]	272.3 [Reserved]
271.5	273.10(e).
271.6(a)	274.4(e).
271.6(b)	274.4(c).
271.6(c)	274.4 (a) and (b).
271.6(d)—Introductory paragraph	274.1.
271.6(d)(1)	274.3.
271.6(d)(2)	Deleted.
271.6(d)(3)	Do.
271.6(d)(4)	Do.
271.6(d)(5)	274.2(d)(3).
271.6(e)	Deleted.
271.6(f)	274.6.
271.6(g) [1]	274.3 [Reserved].
271.6(h)	274.1(d).
271.6(i)	274.11(e).
271.7(a)–(d) [1]	276 [Reserved]
271.7(e)	273.16 and 273.18.
271.7(f)	273.18.
271.8 [1]	272.2 [Reserved].
271.9(a)	274.10(a).
271.9(b)	274.10(f).
271.9(c)	274.10(g).
271.9(d)	274.10(h).
271.9(e)	273.16.
271.9(f)–(j)	274.11.
271.9(k)	Deleted.
271.10	273.6.
272	278.
273	279.
274 [1]	280 [Reserved].
275 [1]	277 [Reserved].

Footnote:

[1] The language in these paragraphs of the old regulations will remain in full force and effect.

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected 1949-1963 and 1964-1972," published in three separate volumes.

1973

7 CFR

38 FR Page

Chapter II
210.1 (c) amended..... 35476
210.2 (i) revised..... 21777
  (b) and (m) removed; (h-2) revised..... 35476
210.4 (a), (b), and (c) amended; (a-1) added..... 14955
  Revised..... 35476
210.5 (a) revised; (b), (c), and (c-1) removed..... 14955
  Heading revised..... 35476
210.5a Amended..... 35476
210.10 (d) removed..... 35476
210.11 (b) and (b-1) revised; (b-2) amended; (f) and (g) removed..... 14955
  Revised..... 35477
210.13 (e) added..... 14956
210.14 (c) removed..... 19661
  (g)(2)(ix) and (x) revised; (g)(2)(xi) removed..... 35477
210.15b Revised..... 14956
210.20 (a), (b), (c), (d), and (e) revised..... 6164, 17722
  (a) revised..... 32423
210 Appendix revised..... 34105
215.1 Revised..... 14956
215.2 (l) and (y) revised..... 14956
  (v) amended..... 17723
  (l) revised..... 21777
  (v) revised..... 30100
215.8 (a) and (b) revised... 17723, 30100
215.16 (a), (b), (c), (d), and (e) revised..... 6165, 17722
  (e) revised..... 14956

7 CFR—Continued

38 FR Page

Chapter II—Continued
  (a) revised..... 32423
215 Appendix revised..... 10632, 34105
220.1 Amended..... 35554
220.2 (j) revised..... 21777
  (f) and (o) removed..... 35554
220.4 (a) and (c) amended; (a-1) and (d) added..... 14956
  Revised..... 35554
220.5 Amended..... 14957
  Heading revised..... 35554
220.7 (e)(12)(iii) revised..... 14957
220.8 (a)(1) amended..... 21777
220.9 (b) and (b-1) revised; (c) removed..... 35554
220.11 (b)(10) amended..... 14957
220.11a Revised..... 14957
220.24 (1) added..... 14957
220.29 (a), (b), (c), (d), and (e) revised..... 6165, 17723
  (a) revised..... 32423
220 Appendix revised..... 13547, 27281, 34105
225.2 (a-1), (a-2), and (t) added; (n) and (p-1) revised; (p) amended..... 11439
  (k) revised..... 21777
225.5 (a) amended..... 11439
225.7 Redesignated as 225.7b..... 11439
225.7a Added..... 11439
225.7b Redesignated from 225.7; (a), (a-1), (b), (b-1), and (c) revised; (b-2) removed..... 11439
225.7c Added..... 11440
225.8 Revised..... 11441

7 CFR—Continued

38 FR Page

Chapter II—Continued

225.9 (a) and introductory text of (b) revised; (b-1), (b-2), and (b-3) added; (f) amended......... 11441
(b)(1)(i) and (2)(1) amended....... 21777
225.10 (a) and (b) revised; (b-1) added; (e) amended.................. 11441
225.11 Amended............................ 11441
225.18 (a-1) removed; (e-1) added.. 11441
225.23 (a), (b), (c), (d), and (e) revised.............................. 6165, 17723
(a) revised...................................... 32424
225 Appendix revised....... 16989, 21497
245 Nomenclature change.......... 14857
Authority amended..................... 24633
245.1 Revised................................ 14957
(a) revised...................................... 34315
245.2 (d), (e), (f), and (g) revised.. 14957
245.3 (b) amended........................ 14957
(a) amended................................. 34315
245.4 Removed.............................. 14957
245.5 Introductory text and (a) revised.. 14957
245.6 (a) amended; (c) revised; (d) removed................................ 14958
(b) amended................................. 34315
245.8 Revised................................ 14958
245.9 Revised................................ 14958
245.10 (a)(2) and (3) revised; (c) and (d) added............................ 14958
245.11 (a), (d), (e), and (f) revised.. 14958
245.12 Removed............................ 14959
246 Added.. 18447
250 Authority amended............... 24633
250.1 (a) revised; (b)(15) added... 24633
250.3 (j) revised; (t) added........... 24633
250.6 (e)(5) revised........................ 33965
250.8 (h) added............................. 24633
250.11 Revised......... 6166, 17724, 32424
265.12 (g) revised................ 6166, 17724
270.2 (s) revised............................ 22465
270.4 (c) revised............................... 8049
270.5 (b)(1) and (5) revised............ 6166
(b) (1), (2), (3), (4), and (5) revised.. 17724
(b)(1) revised.................................. 32424
271.1 (i) revised............................. 22465
271.3 (c)(2)(iv) added..................... 17845
(c)(1)(ii)(H) added......................... 21917
271.4 (a)(2)(iii) revised................. 11338
271.6 (d)(2) revised........................... 8049
272.2 (b) revised............................ 22466
295.10 Revised................................ 6166
(b) revised....................................... 17725

7 CFR—Continued

38 FR Page

Chapter II—Continued

(b) amended.................................. 32424

1974

7 CFR

39 FR Page

Chapter II

210.2 (1) revised; (1-1) added....... 22247
210.8 (e)(13)(iii) and (f) amended.. 22247
210.10 Introductory text of (a)(1) revised; (g) amended..... 11248
210.11 (g)(2) amended.................. 22248
210.14 (b) revised; (h) amended.. 22248
210.17 Amended........................... 22248
210.20 (a) and (b) revised............. 11247
210 Appendix A added.................. 11248
Appendix A amended...... 31514, 32733
215.1 Amended.............................. 28415
215.2 (d), (j), (o) removed; (e), (m), (n), (s), (v), (w) revised: (w-1) and (x-1) added...... 28415
215.4 Heading and paragraph (a) revised; (c) removed............ 28416
215.5 Revised............ 28416
215.7—215.8 Revised...................... 28416
215.9 Amended.............................. 28417
215.10 Revised............................... 28417
215.11 (b) revised; (c) and (e) amended.. 28417
215.12 (a), (b), (d), (f) and (g) amended.. 28418
215.13—215.14 Revised................. 28418
215.15 Amended............................ 28418
215.16 Amended............................ 28418
220.2 (n) revised; (n-1) added...... 22248
220.6 Amended.............................. 22248
220.7 (e)(12)(iii) and (f) amended.. 22248
220.8 Introductory text of (a) revised; (f) amended................. 11249
220.9 Heading, (a), and (b) revised.. 11251
220.12 (d) added........................... 16851
220.24 (c) amended; (g) revised... 22248
220.26 Amended............................ 22248
220 Appendix A added.................. 11249
Appendix C revised....................... 16470
225 Technical amendment.......... 18279
225.2 (a-1) and (a-2) redesignated as (a-2) and (a-3); new (a)(1) and (e)(1) added; (1) revised.. 15757

7 CFR—Continued

Chapter II—Continued

	39 FR Page
225.7a (a) amended; (d) removed; (e), (f), and (g) redesignated as (d), (e), and (f)	15757
(e) removed; (f) redesignated as (e)	18761
225.7b (b) and (b-1) revised; (d) removed	15757
225.8 (b) revised	15757
Revised	18761
225.9 Introductory text of (b) revised; (g) amended	11250
(a)(4) and (b-1) revised; (b)(2)(v) and (b-2)(i)(v) and (2) removed; (b-2)(3) redesignated as (b-2), (2); (b-3) and (b)(4)(i)(*b*), (ii)(*b*), and (iii)(*b*), amended	15757
25.10 (b), (b-1), and (e) revised	15757
225.12 (a) amended	15758
225.18 (e-1) amended; (c) and (f) revised	15758
225.20 Amended	15758
225.23 (a) and (b) revised	11252
225 Appendix A added	11250
Appendix A table heading corrected	12727
Appendix A amended	31515
Appendix B revised	14712
240 Added	3549
240.3 Corrected	5481
240.4 Corrected	5481
240.5 Amended	35783
240.8 Added	35783
244 Added	18762
245 Heading and authority citation revised	30337
Technical correction	35569
245.1 Revised	26885, 30337
245.2 (c) and (e) revised; (d-1) and (f-1) added	30338
245.3 Revised	30338
245.5 Introductory text and (a) revised	30338
245.6 Heading revised; (a) and (b) revised; (c) amended	30338
245.7—245.8 Revised	30339
245.10 (a) and (d) amended; (a)(4) revised	30339
246.1 (a) amended	24218
246.2 (b) revised; (d-1) and (g-1) added	9445
246.4 Revised	9445
246.15 (b) (1) and (2) revised	11252
246 Revised	44729
250.1 (b)(15) amended	39543
250.3 (u) added	5184
(m) revised; (v) added	39543

7 CFR—Continued

Chapter II—Continued

	39 FR Page
250.4 (b) amended	39543
250.6 (e) (1) and (5) revised	5184
(e)(5) amended	30105
250.8 (c)(1) revised	8608, 29569
(h) revised	39543
250.11 Revised	11252, 20957
250.15 (c) revised	15021
270.1 (b) amended	25999
270.2 Amended	25999
270.3 (b) revised; (c) added	26000
270.4 (c) revised; (d) added	26000
270.5 (b) (1) and (2) revised	11252
271 FSP Notice No. 1975-1.1 added	40520 [1]
FSP Notice No. 1975-2.1—1975-6.1 added	41284 [1]
271.1 (p) removed; (q) through (t) redesignated as (p) through (s); (e), (m), (n), (o) and redesignated (r) revised	26000
(a)(3) redesignated as (a)(4); new (a)(3) added	33199
(i) revised	37181
271.2 Revised	43692
271.3 Amended	26002
271.4 (a) (2), (3) and (4) amended; (a) (6) and (7) revised	26004
271.6 (d) introductory text, (2) and (4), and (f) and (h) revised	26005
271.7 (a) and (c) revised; (e) amended	26005
271.9 (a), (b) and (c) revised	26005
271.10 Added	3811
(a) amended	36847
(d) removed	43693
272 Heading revised	26005
272.1 (d) through (g) redesignated as (e) through (h); new (d) added; heading, (c) and redesignated (f) revised	26006
(c)(1) revised	39544
272.2 Heading, (b) and (d) revised; (c), (e), (f), (g), (h), (i) and (j) amended; (k) added	26006
(j) revised	39544
272.3 (a) and (a)(1) amended	26006
272.4 (a), (b) and (c) amended	26006
272.5 (a), (b), (c)(1)(i) and (ii) and (c)(3)(i) amended; (c)(1)(iii) added	26006
272.6 Heading revised; (a) amended	26006
(c) and (d) amended	39544

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[1] Published as notice documents.

BEST

7 CFR—Continued

39 FR Page

Chapter II—Continued

272.7 Heading revised; (a) amended....26006
272.8 Heading revised; (a) amended....26007
273 Heading revised....26007
273.1 Amended....26007
273.7 (a), (b), and (d) amended....39544
273.8 (a) and (f) amended....39544
274.1—274.7 (Subpart A) Authority citation revised....26007
274.1 Amended....26007
274.2 (a) and (b) revised....26007
274.3 (a) revised....26007
274.4 Amended....26007
274.8 Revised....26007
274.10—274.11 Revised....26007
274.12 (a) amended....26007
275 Added....43693
295.10 (b) amended....11253

1975

7 CFR

40 FR Page

Chapter II

210.2 (n-2) added....30918
210.4a (b)(4) and (5) amended; (b)(6) and (7), and (f) added....30918
210.5 Revised....30918
210.7 (a) revised....30918
210.8 (b), (d)(1) and (3) and (e)(13) and (14) revised; (e) introductory text and (10) amended; (e)(16) and (17) added....30919
210.10 (a)(2) revised....30919
210.13 (a), (b-1), and (e) amended; (b) revised; (d) removed....30919
210.14 (a), (e), (g)(1) and (2), and (i) revised; (a-1), (a-3), and (g)(3) and (4) amended; (b) and (f) removed....30919
(a)(4) corrected....31941
210.15 Revised....30920
210.15a (b) and (c-1) amended; (c) revised; (d) removed....30920
210.16 (a) and (d) revised; (b) removed....30920
210.17 Heading and text revised....30920
210.19 (a) amended....30920
210.19a Added....30920
210.20 (a) revised; (f) added....42735
210 Appendix A amended....37027

7 CFR—Continued

40 FR Page

Chapter II—Continued

Effective date statement corrected....40505
215 Appendix revised....3573
215.16 (a) revised; (f) added....42735
220.1 Amended....30923
220.2 (c) revised; (o-1) redesignated (o-2); (b), (c-1), (k-1), (o), (o-1) and (o-3) added....30923
220.4 (d) amended....30923
220.5—220.6 Revised....30923
220.7 (b), (d)(3), and (e)(6), (12) and (13) revised; (e) introductory text amended; (e)(14) and (15) added....30923
220.8 (a)(3) and (b)(1) revised; (e) amended....30923
220.9 Revised....30923
220.11 (b) and (c) revised; (e) amended; (d) removed....30924
220.16 (a) revised; (c) amended; (c)(4) added....30924
220.18 Revised....30924
220.19 Revised....1499
220.21 (d) added....30924
220.22 Removed....1499
220.24 (a) removed; (e) and (i) amended; (b-1) and (j) added; (b), (f), and (g) revised....30924
220.25 (a) revised; (b) removed....30925
220.26 Heading and text revised....30925
220.26a Added; eff. 7-1-77....30925
220.26b Added....30927
220.28 (a) amended....30928
220.29 (a) revised; (f) added....42735
220 Appendix B revised....3405
Appendix C revised....17148
Appendix A amended....37027
Effective date statement corrected....40505
225 Effective date statement corrected....40505
225.10 (f) added....20612
225.23 (a) revised; (f) added....42735
225 Appendix B revised....3406
226 Added....60057
245 Technical correction....57777
245.1 (a) revised....57206
245.2 (e) revised....57207
245.3 Heading and text revised....57207
(c) corrected....58281
245.5 Heading and text revised....57207

7 CFR—Continued

40 FR Page

Chapter II—Continued

245.6 (a) amended; (b) revised.....57208
245.9 Amended.............................. 57208
245.10 (d) amended........................50249
  (c) and (d) revised; (e) added......57208
245.11 (a), (c), (d), and (f) revised; (a-1) added......................57208
246.2 (p)(1)(iii) and (v) corrected...3573
246.3 (b) corrected.......................... 3573
246.4 (b) corrected.......................... 3573
246.12 (b) corrected........................ 3573
246.13 (a)(1)(i) and (2)(i) corrected..3573
246.14 (g) corrected.........................3573
246.15 (c) removed........................ 27930
246.16 (a) corrected.........................3573
  (c)(1) revised; (c)(6) added..........42735
250 Authority citation revised......3757
250.1 (b)(6) revised, (15) amended, and (16) and (17) added....... 3757
250.4 (b) revised...............................3758
250.6 (e)(5) amended.................... 31941
250.8 (b)(3) revised..........................3758
250.11 Amended........................... 42736
270-274 (Subchapter C) Republished.. 1882
270 Republished..............................1882
270.2 (nn) removed....................... 16069
  (a) amended................................. 43017
  (jj) amended................................ 43479
270.5 (b)(1) revised; (b)(6) added.. 42736
271 Republished..............................1884
271.1 (k) revised.............................16069
  (h) revised..................................... 29532
271.3 (e) added.................................2205
271.4 (a)(5) removed; (a)(6) through (a)(8) redesignated as (a)(5) through (a)(7)............29532
271.6 (d) introductory text and (3) revised................................ 16321
  (d)(2) revised.................................29701
  (i) added...36759
271.7 (b), (c), (d), and (e) redesignated as (c), (d), (e), and (f); (b) added................................... 16321
271.8 (f) added............................... 33195
271.9 (a) and (d) revised................. 8937
  (a) revised.....................................28786
271.10 (a) and (c)(1)(i) revised.... 43017
271 FSP Notices:
  1975-1.2 Added.............................3483
    Rescinded................................. 10165
  1976-1.1 (Appendix A) Added..............................55655, 57434
  1975-2.2—1975-6.2 Added...........5747
    Rescinded................................. 10165

7 CFR—Continued

40 FR Page

Chapter II—Continued

  1976-2.1—1976-6.1 (Appendixes B-F) Added.........57434
272 Republished.............................1894
272.2 (d) revised; (e) amended.......8938
  (d) and (e) revised........................ 28786
272.4 (d) added............................. 28787
272.5 (a) revised.............................28787
272.7 (d) redesignated as (e); new (d) added............................ 28787
273—274 Republished.................... 1897
275.10 Revised............................... 29532
295 Revised.................................... 23719

1976

7 CFR

41 FR Page

Chapter II

210 Nomenclature change; correction....................................... 19197
210.1 (c) amended............. 18426, 19198
210.2 (r) revised............................... 3073
  (c-1) revised and redesignated as (c-2); (h-2) redesignated as (h-6); new (c-1), (h-2), (h-3), (h-4), (h-5), and (p-1) added...18426
  (f), (i), (k), (o), (p), and (s) revised...18426
  (c-1), (h-2) through (h-5) and (p-1) added; correction............ 19198
  (c-1) revised and redesignated as (c-2); (h-2) redesignated as (h-6); correction.........................19198
  (f), (i), (k), (o), (p), and (s) revised; correction.........................19198
  (q-1) revised..................................23696
210.3 (b) revised; (b-1) and (b-2) added; (c) amended.................. 18427
  (c) amended; (b) revised; (b-1) and (b-2) added; correction.....19198
210.4a (b)(3) and (c) removed; (b)(5)(iii) and (a) amended......18427
  Corrected....................................... 19198
210.5 (a)(2) and (3) revised.......... 18427
  Corrected....................................... 19198
210.5a Amended........................... 18427
  Corrected....................................... 19199
210.6 (a) and (b) revised; (c) and (j) amended............................... 18427
  Corrected....................................... 19199
210.7 (a) amended.......................... 18427
  Corrected....................................... 19199

7 CFR—Continued

41 FR Page

Chapter II—Continued

210.8 (e)(14) and (d) amended; (f) removed.................................. 18427
Corrected.. 19199
Technical correction.................. 22923
210.10 (h) added.............................. 3073
(a) and (c) amended; (b), (c), (d), (e), (f), (g), and (h) redesignated as (c), (d), (e), (f), (g), (h), and (i); new (d), (f), and (g) amended; (a) revised; new (b) added.................................... 18427
(a) revised; (b) through (h) redesignated as (c) through (i); new (b) added; (d), (f), and (g) amended; correction................19199
(a)(4) added; (a)(2)(v) removed... 23696
(b)(3) (i) and (ii) amended.......... 23696
210.11 (a) revised..........................23696
210.16 (g) and (h) amended......... 18423
Corrected.. 19200
210.17 (e) amended........................ 18428
Corrected.. 19200
210.19 (a) and (b) amended..........18428
Corrected.. 19200
Revised... 43909
210.20 (a) and (f) revised..............18428
Corrected.. 19200
215.1 Amended................................. 31173
215.2 (c) and (x-1) removed; (b), (e), (k), (l), (n), (r), (v), (y) and (z) revised; (d) (e-1), (j), (j-1), (u-1) and (aa) added.................31173
215.3—215.4 Revised.....................31174
215.5 (a) revised; (b) removed..... 31174
215.6 Revised................................. 31174
215.7 (b), (c), and (d) introductory text, (2), (6), and (7) revised; (d)(8) added.................... 31174
215.8 (a), (b) and (c) revised........ 31174
215.10 (b), (c), (e) and (f) revised..31175
215.11 (a) through (d) revised.....31175
215.12 (b) removed; (a) and (d) revised; (f) amended.................31175
215.13 Revised................................ 31175
215.13a Added.................................31176
215.14a Added.................................31176
215.15—215.16 Revised................31177
215.16 Revised................................ 31178
215 Appendix revised........................ 752
Appendix corrected........................ 9533
220 Heading revised.......................34757
Authority citation revised..........34758
Authority citation corrected......36013
220.1—220.3 Amended 32405

7 CFR—Continued

41 FR Page

Chapter II—Continued

220.1 Revised................................. 34758
220.2 Revised................................. 34758
(u) corrected.................................. 36013
220.3 Revised................................. 34759
220.5 Revised................................. 34759
220.6 Heading amended............... 34759
220.7 (f) removed; (d) amended...34759
220.8 Revised................................. 34759
(a)(1)(ii) and (b)(3)(i) and (ii) revised... 52057
220.9 (a) revised.............................34760
220.11 (b) amended........................34760
220.11a Redesignated as 220.12...34757
220.12-220.18 Removed...............35686
220.12 Redesignated from 220.11a...34757
220.13—220.16 Redesignated from 220.24—220.26a................34757
220.14 (h) amended........................34760
220.15 (b) and (f) amended..........34760
220.16 (a) revised...........................34760
220.17—220.18 Redesignated from 220.27—220.28.................34757
220.17 (a) amended........................ 34760
220.18 (a) and (c) amended; (b) removed...34760
220.19—220.23 Removed.............. 32405
220.19—220.20 Added.................. 34760
220.21 Redesignated from 220.29...34758
Amended... 34760
220.24—220.29 Removed............. 32405
220.24—220.26a Redesignated as 220.13—220.16...........................34757
220.27—220.28 Redesignated as 220.17—220.18............................34757
220.29 Redesignated as 220.21.... 34758
220 Appendix B revised..................7752
Appendix C corrected.................18781
Appendixes B and C amended... 31803
Appendixes B and C removed.... 35686
225 Revised....................................... 9533
Technical correction................... 35685
226 Revised..... 26179
226.12 (h) revised.......................... 40110
226.24 (d) corrected 2074
226.25 (g) corrected..........................2074
226.30 Corrected............................. 2074
226 Appendix A added.....................7751
Appendix B revised.......................18054
230 Added...35686
Appendix added.......................... 43388
Appendix corrected..................... 45569

7 CFR—Continued

41 FR Page

Chapter II—Continued

Appendix revised 46856
235 Added 32405
240 Revised 46601
244 Removed 37305
245.1 (b) amended 28783
245.2 (a) and (f-1) revised 28783
(f-1) corrected 30012
245.3 (a) and (c) amended 28783
245.5 (a) amended 28783
245.6 (a) revised 26192
246 Revised 1744
Technical correction 3733
246.3 (a)(5) revised 4251
246.4 (a)(7) and (8) corrected 4251
246.6 (a)(1)(i) corrected; (a)(1) redesignated as (a)(3); new (a)(1) and (2) added 4251
(a)(3)(ii) revised 48119
246.7 (a)(1)(iii) revised; (a)(2)(i) and (b) table amended 48119
246.8 (b) corrected 4251
246.9 (b)(1) and (2) corrected 4251
246.10 (a) corrected 4251
246.11 (b) corrected 4251
246.12 (a) corrected 4251
246.13 (b)(5) corrected 4251
246.16 (b) corrected 4251
246.19 (b) corrected 4251
246.21 (a) redesignated as (b); (b) and (c) redesignated as (c) and (d); new (a) added 4251
250 Authority citation corrected 26192
250.1 (b)(15) revised 8486
(a), (b)(13) and (17) revised; (b)(6) and (13) amended; (b)(18) added 26494
250.3 (g), (i), (j), (m), (n), and (n-1) revised; (o) amended; (n-2), and (w) through (z) added 24695
(g) amended; (j) and (x) revised 29408
(m), (n-2) and (o) corrected 26192
250.4 (b) amended 8486
Heading and (b) revised 24696
(b)(3) revised 29408
250.6 (m) revised 1488
(e) amended 13331, 55171
(d) and (g) revised 24696
250.8 (a), (b), and (g) revised; (i) added 24696
250.10 (e) added 1489
(f) added 8486
(f)(2) amended; (g) and (h) added 24697

7 CFR—Continued

41 FR Page

Chapter II—Continued

250.11 Amended 4539
251 Removed 29408
265 Removed 22070
270.2 (ll) and (mm) redesignated (mm) and (nn); new (ll) added; restored to prior status 18786, 56297
270.5 (b)(6) revised 4539
271.1 (a)(3) amended 7751
(p) revised; (q), (r) and (s) redesignated as (r), (s), and (t); new (q) added 11466
(n)(2) revised; restored to prior status 18787, 56297
(a)(3) revised; (i)(2) amended 26193
271.3 Revised 18787
Restored to prior status 56297
271.4 Revised; restored to prior status 18790, 56297
271.6 (d)(2) revised 8027
Revised 18791
Restored to prior status 56297
(i) revised 34761
271.7 Revised; restored to prior status 18792, 56297
271.10 (a), (c)(1) (i) and (ii) revised; (c)(1)(iii) revised and redesignated as (c)(1)(ii); (c)(1)(iii) added 34761
(c)(1) (i) and (ii) revised, (c)(2)(iii) amended 50411
271 Appendixes B and E tables corrected 1268, 1269
Appendixes A, E, and F corrected 3073
Appendixes A-1 through F-1 and A-2 through F-2 added; Appendixes A through F removed; restored to prior status 18793, 56297
Appendix B-1 table corrected 19200
Appendixes A-2 through F-2 removed; Appendixes A through F added 27365
Appendixes A and B corrected 28784
Appendix A revised 51022
Appendix B revised 51023
Appendix C revised 51024
Appendix D revised 51025
Appendix E revised 51026
272.2 (e) revised 55171
275.10 (c)(1) (ii) and (iii) and (d)(1) temporarily suspended 31803
Revised 47455

BEST COPY

7 CFR—Continued

41 FR Page

Chapter II—Continued
Appendix A amended........................56297

1977

7 CFR

42 FR Page

Chapter II
210 Technical correction............30355
210.2 (n-3) added............2972
210.8 Heading and (e) revised.....27565
210.11 (e) and (f) removed; (g) and (h) redesignated as (e) and (f); (b), (c), and (d) revised............2972
210.15 Revised............2972
210.20 (c) and (d) revised; (g) added............15053
215.16 (d) and (e) revised; (g) added............15054
220.16 Nomenclature changed....27565
220.21 (c) and (d) revised; (g) added............15054
225 Revised............11811
225.18 (d) and (e) revised; (g) added............15054
226.9 (b) revised............38573
226.31 (d), (e), and (g) revised.....15054
226 Appendix added............1475
Appendix revised............38574, 56714
230.19 (d) and (e) revised; (g) added............15054
(d) and (e) correctly designated............18587
230 Appendix amended....23155, 36464
245.1 (a) amended............20810
245.4 Added............20810
246 Revised............43206
246.21 (d) (4), (5), (6) and (7) revised............15054
250.1 (b)(15)(a)(4) and (d)(2) revised; (d)(1) amended............59880
250.4 (b)(4) revised............59881
250.6 (e)(5) amended............59881
250.8 (h) amended............59881
250.10 (f) and (h) revised............59881
250.11 Amended............15055, 59881
270.2 (ll) and (mm) restored to prior status............6817
(u) revised; eff. 10-1-76............14083
270.5 (b)(3) and (4) revised; (b)(7) added............15055
(b)(1) revised............32255
271.1 (n)(2) restored to prior status............6817

7 CFR—Continued

42 FR Page

Chapter II—Continued
(q)(4) (ii) and (iii) redesignated as (iv) and (v); new (q)(4) (ii) and (iii) and (5)(iii) added; (p), (q)(1) and new (q)(4)(iv) (a) and (s) (2) and (4) revised............37966
271.3 Restored to prior status.......6817
(d)(8) revised............26409
(f) added; eff. 1-1-78............60917
republished............61242
271.4 Restored to prior status.......6817
(a)(3) revised............37966, 64359
271.6 Restored to prior status.......8617
(d)(2) revised; eff. 10-1-76............14083
271.7 Restored to prior status.......6817
271.10 (a) revised)............42302
271 Appendixes A through F restored to prior status............6817
Appendix A revised............22357
Appendix B revised............26002
Appendix C revised............26003
Appendix D revised............26004
Appendix E revised............26005
Appendix F revised............26007
Appendix A table corrected........28516
Appendix F corrected............30831
Appendix A amended............35827
Technical correction............38574
Appendix B amended............37531
Technical correction............38574
Appendix C amended............37531
Technical correction............38574
Appendix D amended............37532
Technical correction............38574
Appendix E amended............37532
Technical correction............38574
Appendix F amended............37533
Technical correction............38574
Appendix A revised............58152
Appendix B revised............58153
Appendix C revised............58155
Appendix D revised............58156
Appendix E revised............58157
Appendix F revised............58158
Appendix B corrected............59879
272.1 (i) added............20283
(g) removed; (h) redesignated as (g); new (h) added............23599
272.2 (e)(8) added............20284
272.3 (b) redesignated as (d); new (b), (c), and (e) added.......20284
272.6 (c), (d), and (e) revised..........8629
(b) amended............20284
(d) amended............37533
272.7 (f) added............20284

7 CFR—Continued

42 FR Page

Chapter II—Continued

272.8 (a) amended........................37533
273.5 (c) revised............................37533
273.7 (a) and (d) revised; (b) amended.......................................8629
273.8 (a)(1) and (f) revised............8629
295.3 Amended............................ 23155
295.7 Revised................................ 23155
295.8 (b) and (e) revised; (g) and (h) added...................................23155
295.9 (a), (b), and (d) revised....... 23155

1978

7 CFR

43 FR Page

Chapter II

210.2 (h-1) through (h-6) redesignated as (h-2) through (h-7); new (h-1) added..................60860
210.8 (d) removed..........................60860
210.8a Added.................................60860
210.10 (a)(4) revised......................25991
210.14 (b) and (c) added.............. 60861
210.17 (a) revised; interim; eff. 7-1-79...59823
210.19a Revised............................ 60861
210.19b Added; interim................ 37168
215.1 Amended............................... 1059
215.2 (e-2) and (k-1) added; (k) and (x) revised.............................1059
215.7 (d)(1) and (2) revised............ 1059
215.8 (b) revised; (c) removed; (d) redesignated as (c)................1060
215.9 (b) revised..............................1060
215.10 (a) and (f) revised; (c) amended..1060
215.11 (c)(1) amended; (c)(3) added... 1060
215.13 (a) revised; interim; eff. 7-1-79...59825
215.13a (a), (b), (c), and (d) introductory text revised; (e) amended.......................................1060
215.16 (b) and (g) amended...........1060
220.15 (a) revised; interim; eff. 7-1-79...59825
225 Revised......................... 4040, 13022
225.2 (gg) added............................32738
225.18a Added...............................32738
226 Appendix revised................... 25130
226.4 (d) added.............................. 37979
226.27 (f) added.............................. 37980
227 Added.......................................12297
227.5 (d) and (e) redesignated as (e) and (f); new (d), (g), and (h) added...................................25133

7 CFR—Continued

43 FR Page

Chapter II—Continued

227.30 (c) amended; (d) and (e) redesignated as (f) and (g); new (d), (e), and (f)(3) through (6) added.....................25133
227.31 Added..................................25133
227.36 Added..................................25133
227.37 Added..................................25134
227.41—227.44 Added.................. 25134
227 Appendix added..................... 25131
230.14 (a) revised; interim; eff. 7-1-79...59826
230 Appendix amended......5794, 25135
Appendix corrected........... 7609, 29263
235.1 Revised................................ 37172
235.2 (b) and (l) revised; (k) removed; (p-1) added; interim....37172
235.3 (a) revised............................37172
235.4—235.5 Revised.....................37172
235.6 (a), (b), and (c) revised; (f) removed..37172
235.7 (a) amended.........................37173
235.11 (a) revised..........................37173
240.1 (b), (c), and (d) revised....... 12300
240.2 (d) revised; (l-1) added...... 12300
240.3 Revised............................... 12300
240.4 (a) revised............................12300
240.6 (a) amended......................... 12300
240.7 Amended............................. 12300
240.8 Text designated as (a) and amended; (b) added................. 12301
245.13 Added; interim...................37980
Technical corrections......38569, 39070
246 Nomenclature change........... 23985
246.2 Amended............................. 23985
246.4 (d) and (e) introductory texts, (d)(3), (e)(3) and (4) amended; (f) and (g) headings added.. 23985
246.7 (d), (e)(7), and (g) amended...23985
246.8 (d) note amended................ 23985
(d)(3)(i) amended......................... 58542
246.9 (d)(3) amended.................... 23985
246.10 (a), (b), (d)(3)(ii) and (iii) amended.......................................23985
(a) amended................................. 29264
246.17 Heading and (b) heading revised; (a) and (b)(2) amended; (c) and (d) redesignated as (c)(1) and (c)(2); new (c) introductory text added..............23985
246.26 (e)(6) amended.................. 23986
247 Added..8778
250.1 (b) (6) and (18) amended; (b) (13) and (17) revised...........39073

BEST COPY

7 CFR—Continued

Chapter II—Continued	43 FR Page
Technical correction	41947
250.3 (n-1) revised	20955
(j) amended; (n-3), (n-4), and (n-5) added	39073
Technical correction	41947
250.4 (b) (2) and (3) amended; (b)(5) revised; (h) added	39073
Technical correction	41947
250.6 (r) amended	20955
(d-1) added; (q) amended	39073
Technical correction	41947
250.8 (c)(1) revised	20955
(a) revised	39073
Technical correction	41947
250.10 (f)(3)(iv) revised	4029
250.14 Removed	9783
270 Redesignated as 271 and revised	47882
270.2 (f), (g), (i), (m), (n), (q), (s), (x), (cc), (kk), (ll), (mm), (rr), (ss) and (zz) removed	43273
271 Redesignated in part as 272 through 280 and revised	47884
New 271 redesignated from 270 and revised	47882
271.1 (q)(8) added	41949
271.2 Redesignated as 271.11; new 271.2 added	43273
271.3 (f)(2) removed; (f)(3) through (11) redesignated as (f)(2) through (10); new (f)(8) revised; (f)(9) amended; eff. 1-1-78	1612
Republished	1924
Appendix added	8111
271.7 (e) revised	22669
271.10 (c)(1)(i) revised; (c)(1)(ii) amended	29264
271.11 Redesignated from 271.2	43273
271 Appendix G added	21299
Appendix A revised	21304
Appendix B revised	21305
Appendix C revised	21307
Appendix D revised	21308
Appendix E revised	21310
Appendix F revised	21311
Appendix A corrected	22670
Appendix D corrected	22670
Appendix E corrected	22670
Appendix F corrected	22670
Appendix A revised	54199
Appendix C revised	57492
Appendix D revised	57510
Appendix E revised	57526
Appendix B revised	57543

7 CFR—Continued

Chapter II—Continued	43 FR Page
Appendix F revised	57564
272 Redesignated as Part 278 and revised	43274
New 272 redesignated in part from 271 and revised	47884
272.5 (a) amended; (c)(3)(ii) revised; (c)(3)(iv) removed; (c)(3)(v) redesignated as (c)(3)(iv) and revised	9783
273 Redesignated as Part 279 and revised	43279
New 273 redesignated in part from 271 and revised	47889
273.9 (d)(1) amended	54215
273.10 Appendix A added	54203
Appendix C added	57496
Appendix D added	57514
Appendix E added	57531
Appendix B added	57548
Appendix F added	57568
274 Redesignated as 280; new 274 redesignated in part from 271 and revised	47927
275 Redesignated as 277	47927
275.10 (c)(1)(ii) and (d)(3) suspended; (c)(1)(i), (d)(1) and (4) amended	35646
277 Redesignated from 275	47934
278 Redesignated from Part 272 and revised	43274
279 Redesignated from Part 273 and revised	43279
280 Redesignated from 274	47934
282 Added	39074
282.10 Added	55340
282.11 Added	39077

1979

7 CFR

Chapter II	44 FR Page
210 Nomenclature change	48156
210.2 (c-1) revised	37897
210.4 (b) amended	1363
210.4a (b)(3) added	5381
210.6 (a) and (b) revised; (a-1) added; (c) through (j) amended	10049
210.7 (c) and (d) added	37897
210.9a Added	48156
210.10 (a)(4) authority citation added	10700

7 CFR—Continued

44 FR Page

Chapter II—Continued
(a)(1) and (2)(ii) amended; (a)(2)(i) and (iv), (b)(3), (c), (d), (f), and (i) revised; (e) added........48156
210.13 (b) amended........61561
210.14 (f) added........48157
210.19b Authority citation added........10699
(d) table amended........48157
210.20 (a), (f), and (g) revised; (e) amended........37897
215.1 Authority citation added...10700
Amended........33047
215.2 (e-2), (k), (k-1), and (x) authority citation added........10700
(e-1) revised........37898
215.6 Existing text designated as (a); (b) and (c) added........37898
215.7 (d)(1) and (2) authority citation added........10700
(b) and (d)(2) revised........33047
215.8 (b) and (c) authority citation added........10700
(b) revised........33047
215.9 (b) authority citation added........10700
215.10 (a), (c) and (f) authority citation added........10700
215.11 (c)(1) and (3) authority citation added........10700
215.13a (a) through (e) authority citation added........10700
(a), (b), (c), and (e) revised........33047
215.16 (b) and (g) authority citation added........10700
(a), (b), and (g) revised; (e) and (f) amended........37898
220.2 (b) and (c) revised........37899
(v-1) added........48159
220.6 Heading revised; existing text designated as (a); (b) and (c) added........37899
220.9 (b) and (c) revised; (d) and (e) added........48159
220.11 (a) amended........61561
220.18 (a) removed........37899
220.21 (a), (f), and (g) revised; (e) amended........37899
225 Revised........11
225.1 Corrected........3955
225.12 (c) corrected........3955
225.13 (a) amended........62279
226.12 (k) revised........62280
226 Appendix revised........21252
227 Revised........28282

7 CFR—Continued

44 FR Page

Chapter II—Continued
227.5 Authority citation correctly added........3955
227.30 Authority citation correctly added........3955
227.31 Authority citation correctly added........3955
227.36 Authority citation correctly added........3955
227.37 Authority citation correctly added........3955
227.41 Authority citation correctly added........3955
227.42 Authority citation correctly added........3955
227.43 Authority citation correctly added........3955
227.44 Authority citation correctly added........3955
227 Appendix revised....... 20627, 70451
230 Heading revised: nomenclature changes; interim........61565
230.2 (d) revised........37900
(e) and (v) removed; (h), (i), (dd), (ee), (u), and (x) revised; (n-1), (n-2), (cc-1), and (cc-2) added; interim........61565
230.4 Revised; interim........61565
230.7 (a) revised; interim........61566
230.8 Existing text designated as (a); (b) and (c) added........37900
Existing text designated as (a) and amended; (b) and (c) revised; (d) and (e) added; interim........61566
(f) and (g) added........71401
230.9 (d) added; interim........61566
230.12 (i) added; interim........61566
230.13 (b) revised; interim........61567
230.16 (a), (b)(3) heading and (iii) introductory text and (c) revised: (b)(2) and (3) introductory text amended: (b)(3)(i) and (4) removed; (b)(5) redesignated as (b) (4); interim........61567
230.19 (a), (b), and (g) revised; (f) amended........37900
230 Appendix added........28287
235.1 Authority citation added...10700
Revised........48957, 51185
235.2 (b), (l) and (p-1) authority citation added........10700
(b), (l) and (p-1) revised; (k) removed; final........48957
(d) and (s) revised........51185

7 CFR—Continued

44 FR Page

Chapter II—Continued

235.3 Authority citation added... 10700
  (a) revised; final... 48957
235.4 Authority citation added... 10700
  Revised... 48957
  (a) amended; (b)(1), (2), and (3) added; (c), (d), and (h) revised... 51185
  (b-1) added; interim... 53489
  (b-1) comment time extended... 62466
235.5 Authority citation added... 10700
  Revised... 48958
  Amended... 51185
235.6 (a), (b), and (c) authority citation added... 10700
  Heading revised; (h) and (i) added... 37901
  (a), (b) and (c) revised... 48958
  (c) amended; (d) removed... 51185
  (a-1) added; interim... 53489
  (a-1) comment time extended... 62466
235.7 (a) authority citation added... 10700
  (a) amended... 48958
235.8 (b) revised... 51186
235.11 (a) authority citation added... 10700
  (a) revised... 48958
245.1 (a) amended... 33048
  (a) amended (amendment removed at 54037)... 47036
245.3 (a) amended; (b)(1) and (c) revised... 33049
245.5 (a) introductory text amended; (a)(1)(i) and (2) revised (amendments removed at 54037)... 47036
245.6 (e) and (f) added; interim... 29028
  (b) redesignated as (b-1) and revised; (b-2) through (b-7) added (amendments removed at 54037)... 47037
245.9 Removed... 33049
245.10 (a) amended... 33049
245.11 (a)(1) revised... 1364
245.12 Added... 37901
245.13 Authority citation added... 10700
246 Authority citations added... 5865
  Determination... 28287
  Revised... 44440
  Determination... 59489
250.1 Authority citation correctly added... 3955
  (b)(19) added... 32193
250.3 Authority citation correctly added... 3955

7 CFR—Continued

44 FR Page

Chapter II—Continued

250.4 Authority citation correctly added... 3955
250.6 Authority citation correctly added... 3955
250.8 Authority citation correctly added... 3955
250.10 (a-1) added... 32193
270—283 (Subchapter C) Heading revised... 35924
271.2 Authority citation correctly added... 8240
  Amended... 33383, 35924, 45891
271.7 Added... 33764
272.1 (g)(2) added... 17984
  (g)(1)(iii) amended... 19174
  (g)(3) added... 33765
  (c) revised; (g)(4) added... 35925
  (g)(1)(x) revised... 43250
  (g)(6) added... 45892
  (g)(1)(iv)(B) revised... 54039
  (g)(7) added... 55163
  (g)(10) added... 64390
  (g)(4) and (6) correctly designated... 75617
272.4 (c)(3)(i) revised; (e)(1) (v) amended... 33383
272.62 (a) through (d) added; (e) revised... 64390
  (b)(3)(iii) corrected... 66574
273.2 (c)(2)(ii) revised... 33383
  (f)(1)(iv) added; (f)(9)(i) and (ii) revised... 55164
  (f)(9)(i) corrected... 75618
273.6 (a) through (c) amended... 33383
273.7 (c) added... 17984
273.8 (e)(1) amended; (e)(11)(v), (vi), and (f) revised; (e)(11)(vii) added... 33383
273.9 (d)(1), (3), and (4) amended; Appendixes A, B, and C revised... 27642
  (c)(10)(iii) and (vi) revised; (c)(10)(vii) and (viii) added... 33384
  (d)(3) through (7) redesignated as (d) (4) through (8); new (d)(3) added; new (d)(5) revised... 55164
  (d)(1) amended; appendix B revised... 64068
273.10 (e)(3)(v) revised... 33384
  (e)(2)(ii) amended; (e)(2)(iii) added... 33765

7 CFR—Continued

44 FR Page

Chapter II—Continued
(d)(1)(i) and (3) amended; (e)(1)(i)(E) through (G) redesignated as (e)(1)(i)(F) through (H) and revised; (d)(5) and new (e)(1)(i)(E) added 55165
Amended 27643, 64069, 72571
273.11 (a)(2)(iv) added; (e)(1) and (5) amended 33384
273.12 (e)(4) amended 19175
(c) introductory text and (1)(iii) revised 33384
(a)(1)(vi) added 55165
(a)(1)(vi) corrected 75618
273.13 (b)(10) added 33385
273.15 (g), (i)(2), (r)(2) and (s)(1) revised 33385
273.18 (b)(3)(ii) amended 33385
274.2 (f)(3) amended; (g)(3)(i)(A) and (h) revised 33385
275 Added 45893
275.10 (g) and (h) added 8548
275.16 Redesignated as 277.17; new 277.16 added; interim 47038
275.17 Redesignated from 277.16; interim 47038
276.3 Added 33385
276.6 Added 33386
281 Added 35925
282.11 Authority citation correctly added 8240
282.12 Added 59052
283 Added 35928
295.3 Amended 25396
295.4 Amended 25396
295.5 Amended 25396
295.6 Amended 25396
295.7 Introductory text amended; (a), (b), (c) and (d) revised 25396
(e) revised, (f) added 35195
295.8 (g) and (h) revised 25396
Technical correction 35195
295.9 (a) through (d) revised; (e) added 25397
Technical correction 35195

1980

7 CFR

45 FR Page

Chapter II
210.2 (u) added 998
(h-1) through (h-7) redesignated as (h-2) through (h-8); (c-3), (c-4), and new (h-1) added 6770
Technical correction 14005
(h-6) through (h-8) redesignated as (h-7) through (h-9); (b), (b-1), (b-2), (b-3), (b-4), and (q-2) added; new (h-6) added; interim 64083
210.4a (b)(7) revised; interim 64084
210.5 (a) amended; interim 64084
210.6 (b-1) added 66446
210.7 (b) revised 51176
210.8 (e)(18) added; interim 64084
210.10 Revised 32514
210.13 (b) amended 7228
(b) revised; interim 64084
(b) revised; emergency 82622
210.14 (a)(2), (3), (4), and (g)(2) revised; (g)(5) added; interim 64084
210.15b Revised 6771
(b)(1) amended 76937
210.16 (a) and (e) revised, (b) added, interim 64086
210.17 (f) added; interim 64086
210.19 (a) revised; interim 64086
210.19b Removed 32514
210.20 Redesignated as 210.21; new 210.20 added 999
Technical correction 14005
(a) and (d) amended; (d-1) and (d-2) added; emergency 82889
210.21 Redesignated from 210.20 999
210 Appendix B correctly added and amended 6772
Appendix B amended 72081, 76937
215.10 (a) and (b) revised; (c) removed; emergency 82622
220.2 (c-1), (c-2), and (i-1) added 6771
220.11 (a) amended 7228
(a) and (b) revised; emergency 82622
220.12 Revised 6771
(b)(1) amended 76937
220 Appendix B correctly added and amended 6772
Appendix B amended 72081, 76937
225.1 Amended 1846
225.2 (n) amended; (s) and (x) revised 1846
225.4 (h) amended; (k) added 1846

7 CFR—Continued

45 FR Page

Chapter II—Continued

225.5 (q)(6) removed; (b)(11) and (aa) added; (c), (k)(2), and (q)(2) amended.... 1846
(aa) corrected.... 8562
225.6 (a) (1), (10), (12), and (19) revised.... 1847
225.7 (e) and (g) revised; (k) amended.... 1848
225.10 (a)(1)(iii), (2)(iv), and (3) (iv) revised.... 1848
225.13 (f) amended.... 1848
(a) amended.... 7228
(a) amended; emergency.... 85437
226 Revised.... 4970
Appendix added.... 10752
226.29 (j) corrected.... 17129
227.27 (c) added; interim.... 14842
227.30 (b-1) added; interim.... 14842
230 Nomenclature changes.... 33593
230.2 (e) and (v) removed; (n-1), (n-2), (cc-1), and (cc-2) added; (h), (i), (u), (x), (dd), and (ee) revised.... 33593
230.4 Revised.... 33594
230.7 (a) revised.... 33594, 66446
230.8 Existing text designated as (a) and amended; (b) through (e) added.... 33594
230.9 (d) added; final.... 33595
230.12 (i) added; final.... 33595
230.13 (b) revised.... 33595
230.16 (a), (b)(3)(iii) introductory text, and (c) revised; (b)(2), (3) heading and introductory text amended; (b)(3)(i) and (4) removed; (b)(5) redesignated as new (b)(4); final.... 33595
235.4 (b-1) comment time extended.... 1041
(b) introductory text and (c) revised; (b-1) and (b) (3) redesignated as (b)(3) and new (4); (b) (2) and new (3) amended; new (b)(4) revised; interim.... 3566
(b)(3) revised; interim.... 64087
235.6 (a-1) comment time extended.... 1041
(a-1) and (c) amended; interim.... 3566
(a-1) revised.... 64087
235.7 (c) added.... 8563
235.11 (b) revised; (e) added; interim.... 64087
245.2 (j) added.... 67287
245.4 Revised.... 52771
245.6 (e) and (f) removed.... 67287

7 CFR—Continued

45 FR Page

Chapter II—Continued

245.9 Added.... 67287
245.13 Added; final.... 1000
246 Determination.... 20458, 72082
246.8 Added.... 74874
246.19 (b) (2) and (3) removed; (b)(4) and (5) redesignated as (b) (2) and (3) and revised; interim.... 66448
247 Revised; interim.... 15067
250 Revised.... 82895
271.2 Amended.... 15897, 23291, 71349
Amended.... 81031
271.6 (b)(1)(ii) amended.... 71350
(a) added.... 85699
271.7 Revised.... 22005
Republished.... 22880
272.1 (g)(5) added.... 2609
(g) (8), (9) and (12) added.... 7215
(g) (8), (9), and (12) republished.... 7237
(g)(14) added.... 12767
(g)(11) added.... 15898
(g)(3) revised.... 22006
(g)(3) republished.... 22882
(g)(15) added.... 23291
(g)(17) added.... 27431
(g)(16) added; interim.... 46040
(g)(14) and effective date corrected.... 53448
(g)(5) correctly designated.... 71350
(g)(13) added.... 73003
(g)(18) added.... 77263
(g)(21) added.... 79001
(g)(24) added; emergency.... 81032
(g)(25) added.... 85699
272.4 (f) added.... 77263
272.5 Added.... 2610
(b)(5)(ii) revised.... 71350
272.6 (b)(8) revised.... 7216
(b)(8) republished.... 7237
(b)(8) amended.... 73003
272.8 Added.... 73003
273.1 (e)(3) added; (f)(2) revised.... 23291
(b)(6) revised; (b)(7) amended; interim.... 46040
(b)(7) revised.... 71350
(f)(2)(ii) corrected.... 71351
273.2 (f)(1)(v) added; (f)(9)(i) and (i)(4)(i) revised.... 7216
(f)(1)(v), (9)(i), and (i)(4)(i) republished.... 7238
(i)(3)(ii) revised.... 23292
(f)(5)(iii) amended; (f)(8) and (k) added.... 27432

7 CFR—Continued

Chapter II—Continued

	45 FR Page
(f)(2)(iii) removed; (f)(2)(iv) redesignated as (f)(2)(iii); interim	46040
(f)(9)(i) revised	71350
273.3 Amended	2613
273.5 Revised; interim	46040
273.6 Redesignated as 273.20; new 273.6 added	7217
Republished	7238
(e) revised	71350
273.7 (l) added	27434
(b)(9) revised; interim	46040
(f)(2) and (i)(3)(vi) removed; (f)(1) redesignated as (f) and amended; (h) introductory text and (i) amended; interim	46041
(i)(2)(vi) correctly removed	48099
(b)(8) amended	73009
273.8 (e)(11)(viii), (ix), and (x) added	12767
(b) and (i)(4) amended; (e)(11)(ix) and (x) removed; (e)(3), (11)(vii), (h)(1) and (3), and (j) revised; interim	46041
(e)(11)(viii), (ix), and (x) effective date corrected	53448
(e)(12) added; emergency rule	63832
(e)(11)(viii) redesignated as (e)(11)(ix); new (e)(11)(viii) added	71350
(h)(3) corrected	71351
(e)(8) revised	79001
273.9 (b)(3) revised	7218
(b)(3) republished	7239
(c)(10)(v) revised; (c)(10)(ix) and (x) added	12767
(a)(1), (d)(7) and (8), and Appendix A revised; (a)(2) amended; emergency	40094
(c)(10)(v) revised; (c)(10)(ix) and (x) removed; interim	46041
(c)(10) (v), (ix), and (x) effective date corrected	53448
(b)(2)(vi) added	79001
(d) (1), (4), and (5) amended; appendixes B and C revised; emergency	79742
273.10 (e)(1)(ii) and (2)(ii) revised; (f)(3)(iv) added	7218
(e)(1)(ii), (2)(iii), and (f)(3)(iv) republished	7239
(e)(2)(ii) amended; (e)(2)(iii) revised	22006

7 CFR—Continued

Chapter II—Continued

	45 FR Page
(e)(2)(ii) amended and (e)(2)(iii) republished	22882
(e)(4)(ii) revised, emergency	40094
(d) introductory text and (e)(1)(ii) revised	71351
(e)(4)(ii) revised; Appendix A revised; emergency	79743
(e) heading and (4)(ii) and Appendix A revised; emergency	83474
273.11 (c) introductory text revised; (c)(5)(iii) added	7218
(c) introductory text and (5)(iii) republished	7240
(e)(1) amended; (e)(2), (5), and (7) revised; (f) redesignated as (g); new (f) added	23292
(c) introductory text amended; (c)(5) revised; interim	46041
(c)(5) revised; (e)(5) amended	71351
273.12 (e)(3) revised	7218
(e)(3) republished	7240
(a)(1)(v) amended; interim	46042
(e)(1)(i) revised; emergency	79743
273.13 (b)(11) added	7219
(b)(11) republished	7240
(b)(12) added	23293
273.16 (a), (d) introductory text and (9)(ii), and (e)(3) revised; (e)(4) added	7219
(a), (d) introductory text, (9)(ii), (e)(3) and (4) republished	7240
273.18 (c)(2), (d), (e), and (f) revised; (c)(3) and (4) removed	7220
(c)(2), (d), (e), (f)(1) and (2) republished	7241
273.20 Redesignated from 273.6	7217
274.2 (e)(2) and (f)(6) amended	22007
(e)(2) and (f)(6) amendments republished	22882
274.3 (b)(6) amended	22007
(b)(6) amendment republished	22882
(b)(6) correctly designated	71351
274.10 (d) amended	23293
275.1-275.4 (Subpart A) Added	15898
275.5-275.9 (Subpart B) Added	15900
275.6 (b)(1)(ii) designation correctly added	23637
275.7 (b)(1)(i) corrected	23638
(e)(5) corrected	46784
275.9 (d)(2) corrected	25375

7 CFR—Continued

Chapter II—Continued

	45 FR Page
275.11 (b)(2) amended	15898
(g) added; emergency	81032
275.12 (b)(1)(vii) revised; (c) added; emergency	81032
275.13 (b)(2)(ii) amended	15898
(c) added; emergency	81032
275.15 (Subpart D) Added	15909
275.16-275.19 (Subpart E) Added	15909
275.20-275.23 (Subpart F) Added	15911
Heading correctly added	23638
275.21 (c) added; emergency	81032
275.25 (Subpart G) Added	15912
276 Revised	77263
277 Added	85702
278.1 (e) revised; (f) through (l) redesignated as (g) through (m); new (f) added	23293
278.2 (g) revised	23294
282.10 Effectiveness extended	40094
(a) amended; (d)(1)(iii) revised; (i) added	54639
282.14 Added; emergency	66450
282.15 Added; emergency	69198
283.4 (e)(2) revised	14006
283.5 (m) revised	14006

1981

7 CFR

Chapter II

	46 FR Page
210.2 (o)(2) revised; emergency	2330
(b), (b-1) (b-2), (b-3), (b-4), (h-6) through (h-9), and (q-2) comment time extended	35629
(o) introductory text revised; (o)(1) amended; (v) and (w) added; emergency interim	51365
(n-1)(2) amended; emergency	51367
Technical correction	53647
210.4 (b) amended; emergency	3
(a) and (c) amended	3813
(a) and (b) amended; (c) revised; emergency	51367
210.4a (b)(7) comment time extended	35629
210.5 (a) comment time extended	35629
210.6 (b) amended	3813
210.8 (e)(18) comment time extended	35629
(e)(17) removed; emergency	51367
210.10 Compliance exemption in part to 7-1-82	37017

7 CFR—Continued

Chapter II—Continued

	46 FR Page
210.11 (c) amended	3813
(b) amended; emergency	51367
210.13 (b) comment time extended	35629
(c) and (d) removed; (e) redesignated as new (c); emergency	51367
210.14 (a) (2), (3), and (4), and (g) (2) and (5) comment time extended	35629
(g)(3) removed; (g) (4) and (5) redesignated as new (g) (3) and (4); emergency	51367
210.16 (a), (b), and (e) comment time extended	35629
210.17 (f) comment time extended	35629
210.19 (a) comment time extended	35629
215.1 Amended; emergency	4, 51365
Technical correction	53647
215.2 (v)(2) revised; emergency	2330
(k-1) removed; (q) and (v)(1) amended; (v) introductory text revised; (bb) and (cc) added; emergency interim	51365
Technical correction	53647
215.7 (a) and (d)(1) amended; emergency interim	51365
Technical correction	53647
215.8 (b)(1) amended; emergency	4
(b)(1) amended; emergency interim	51365
Technical correction	53647
220.2 (c)(2) revised; emergency	2330
(v-1) amended; emergency	50927
(u)(1) amended; (z-1) redesignated as (aa); (bb) and (cc) added; emergency interim	51365
(s)(2) amended; emergency	51367
Technical correction	53647
220.4 (a)(3) amended; (b) removed; (c) redesignated as new (b) and amended; (d) redesignated as (c); emergency	51367
220.9 (b) amended	3813
(e) revised; emergency	50928
(b) amended; emergency	51368
220.11 (c) revised; emergency interim	51366
Technical correction	53647
225 Revised	6272
226 Revised; interim	57983
226.2 Amended	58007

7 CFR—Continued

Chapter II—Continued

	46 FR Page
226.4 (g) introductory text and (2) revised; emergency	5
226.6 (b) revised; (c)(11) added	58008
226.10 (c) revised	58008
226.11 (b) and (c) revised	58009
226.15 (a), (b) (1), (4), and (5) revised; (b)(6) added	58009
226.16 (k) added	58009
226.17 (a), (b) (2) and (4) revised	58009
226.18 (b) introductory text revised	58010
226.19 (a), (b) (2) and (6) revised	58010
226.25 (d) revised	3814
230.2 (aa)(2) revised; emergency	2331
235.2 (o)(2) revised; emergency	2331
(o) introductory text revised; (o)(1) amended; (u) and (v) added; emergency interim	51366
Technical correction	53647
235.4 (a) amended	3813
(b)(3) comment time extended	35629
235.6 (a-1) comment time extended	35629
235.11 (b) and (e) comment time extended	35629
245.2 (g)(2) amended; emergency	51368
245.3 (d) added; emergency	3815
(c) amended; emergency interim	51366
Technical correction	53647
245.4 Introductory text amended; emergency interim	51366
Technical correction	53647
245.11 (a)(1) amended; emergency	51368
246.2 Amended	7851
246.4 (a) (9) and (12) revised	7851
246.5 (e)(1) (i) through (iv) revised; (e)(1)(v) added	7851
246.6 (b)(3) revised	7851
246.7 (a)(3), (b)(2), and (c) revised; (n) added	7851
(b)(2), (c)(3)(ii), and (h)(3) revised; (c)(2) amended	47423
246.8 Implementation date extended to 5-12-82	43823
247 Revised	6341
Effective date deferred	11501
250.1 (b) (6) and (17) amended; (b)(20) added; emergency	2332

7 CFR—Continued

Chapter II—Continued

	46 FR Page
(b) (6), (10), and (11) corrected	26759
250.3 Corrected	26759
Amended	41480
250.4 (b)(5)(i) revised; emergency	2332
(b)(4) corrected	26759
250.6 (h) and (r) corrected	26759
(n), (r), and (s) revised; (w) added	41481
250.8 (a) amended; emergency	2332
(a) and (b)(1) corrected	26759
250.13 (g)(3)(iii)(B) corrected	26759
(f) removed	41482
250.15 Added	41482
271.2 Amended	7263, 43025
Effective date deferred	11501
Amended; eff. 1-7-82	60165
Amended; eff. 1-28-82	62809
271.7 Revised	1425
(b) and (d)(2)(i) amended; (d)(1)(ii) and (3) revised	44721
272.1 (g)(23) added	2335
(g)(3) revised	1427
(g)(22) added	3199
(g)(26) added	4627
(g)(28) added	6314
(g)(31) added	7263
(g) (28 and (31) effective date deferred	11501
(g)(33) added; interim	39562
(g)(16) revised	43025
(g)(35) added	44721
(g)(24) revised	46783
(g)(30) added	50275
(g)(29) added	50282
(g)(37) added; eff. 1-7-82	60166
272.2 Added	6315
Effective date deferred	11501
(a)(2) and (c)(1)(i) amended; (d)(1)(i) and (e)(4) removed; (d)(1) (ii) and (iii) and (e) (5) through (7) redesignated as (d)(1) (i) and (ii) and (e) (4) through (6)	44722
272.3 Added	6315
Effective date deferred	11501
(d)(1)(ii) amended	44722
272.4 (b), (c) (1) and (2) amended	44721
272.6 Revised	44722
272.8 (f) removed (g) through (p) redesignated as (f) through (o); new (h) revised	44722
273 Technical correction	46281

7 CFR—Continued

Chapter II—Continued

	46 FR Page
273.1 (f)(1)(i) revised	4627
(b)(6) revision and (b)(7) amendment confirmed	43025
(a) and (c) revised; (b)(2) removed; (b) (3) through (8) redesignated as (b) (2) through (7); (g) added	44722
(e)(4) added; eff. 1-7-82	60166
273.2 (i)(3) introductory text added	1427
(f)(1) (vi) and (vii) added; (f)(2) introductory text and (i), (3), (4) (i) and (iii), (5), (6), (9)(i), (i), (4)(i) revised; (f)(2)(ii) removed; (f)(2)(ii) amended	3199
(k) introductory text and (2)(ii) introductory text revised; interim	39562
(f)(2)(iii) removal confirmed	43025
(i)(4)(iii) revised	44723
(i)(3)(v) added; eff. 1-7-82	60166
273.3 Revised; eff. 1-7-82	60166
273.5 Revised	43025
273.7 (a) revised; (b) introductory text and (1) through (9) redesignated as (b)(1) introductory text and (i) through (ix); new (b)(1) (iii), (vi), (viii), and (ix) revised; new (b)(2) added	4627
(c) redesignated as (n) and (n)(3) amended; new (c) and (d) added	4628
(f) redesignated as (g) and revised; (g) redesignated as (m); new (f) added	4629
(h) introductory text, (1), (3), (4), (5), and (6) redesignated as (h)(1) introductory text, and (i) through (v), new (h)(1) introductory text, (iv), and (v) and (2) revised	4631
(k) heading and (1) and (m) revised	4632
(f)(2) and (i)(2)(vi) removal confirmed; (f)(1) redesignation as (f) and amendment, (h) introductory text and (1) amendment confirmed	43025
(b)(1)(ix) revised	43026
(j) revised	44723
273.8 (g) amended	3202

7 CFR—Continued

Chapter II—Continued

	46 FR Page
(b) and (i)(4) amendment confirmed; (e)(3) and (11)(viii), (h)(3), and (j) revision confirmed; (e)(11) (ix) and (x) removal confirmed	43025
(h)(1) revised; (h) (2) through (5) redesignated as (h) (3) through (6); new (h)(2) added	43026
(d) amended; eff. 1-7-82	60166
273.9 Appendix A revised	27902
(c)(10)(v) revision confirmed; (c)(10) (ix) and (x) removal confirmed	43025
(b)(3) amended	43026
(a), (d) (2), (7), and (8) revised; (d) (3) and (5) amended; appendixes A, B, and C redesignated as appendixes B, C, and D; new appendix A added	44723
Authority citation corrected	46282
273.10 (e)(2)(ii) amended; (e)(2)(iii) revised	1427
Appendix A corrected	27902
(e)(1)(i)(C) and (f)(3)(ii) removed; (e)(1)(i) (D) through (H), (e)(2)(iii), and (f)(3) (iii) and (iv) redesignated as (e)(1)(i) (C) through (G), (e)(2)(vi), and (f)(3) (ii) and (iii); new (e)(2)(vi) (C) and (D) amended	44724
(a) (1) and (2), (e)(1)(i) introductory text, (A) and (B), (e)(2) (i), (ii), and new (vi)(B), and (4)(ii) revised; (a)(3) heading and (4) heading, (e)(2) (iii), (iv), and (v) added	44725
Authority citation corrected	46282
Appendix amended	46281
(g)(4) introductory text and (iv) heading added; (g)(4) (i), (ii), and (iii) revised; (g)(4)(v) removed	50275
273.11 (c) introductory text amendment confirmed; (c)(5) revision confirmed	43025
(a)(2)(iii), (4)(iii)(C), (b)(1)(iii), and (c)(3) amended; (b)(2) removed	44726
(g)(1) revised; (g)(2) redesignated as (g)(5); new (g) (2) through (4) and (6) added	50282

7 CFR—Continued

46 FR Page

Chapter II—Continued

(g) redesignated as (h); new (g) added; eff. 1-7-82 60166

273.12 (c)(1)(iii) revised 3202

(a)(1)(v) amendment confirmed 43025

(e) introductory text and (1) revised 44726

273.13 (b)(8) removed; (b) (9) through (12) redesignated as (b)(8) through (11) 44726

273.15 (a) revised 1427

274.2 (e)(2) and (f)(6) revised 1427

(h) revised 44727

(e)(8) and (f)(4) amended 50277

(e)(5) and (g)(1) introductory text revised; (g)(3) removed; (g)(4) and (h) redesignated as new (g)(3) and (i); new (h) added 50283

(h)(4) added; eff. 1-7-82 60167

274.3 (b)(6) revised; (b)(7) redesignated as (b)(8); new (b)(7) added 1428

(c) revised 50284

274.7 (c) introductory text revised 50277

274.8 (a)(5) added; (a)(6) revised 2335

274.10 (d) amended; eff. 1-7-82 ... 60167

275.3 (b)(2) removed; (c) revised 7263

(b)(2) removal and (c) revision effective date deferred 11501

275.12 (b)(1)(vii) and (c) revised 46783

275.13 (c) revised 46783

275.16 (b)(3) revised 7263

(b)(3) effective date deferred 11501

275.21 (c) revised 46784

275.25 (c) revised; (d) added 7263

(c) and (d) effective date deferred 11501

(c)(2)(ii) corrected 55083

277 Technical correction 2336

277.4 (b)(2) added; (b) (5), (6), and (7) added 7266

(b) (2) and (5) through (8) effective date deferred 11501

277 Appendix A amended 44727

278.1 (g) through (m) redesignated as (h) through (n); new (g) added; eff. 1-7-82 60167

(c) revised; eff. 1-28-82 62809

278.2 (h) amended 50277

(g) revised; eff. 1-7-82 60167

278.3 (a) revised; eff. 1-28-82 62810

7 CFR—Continued

46 FR Page

Chapter II—Continued

280 Added 8922

280.1 Added 8922

282.13 Added 46284

282.14 Project results 56561

282.16—282.17 Added 40195

1982

7 CFR

47 FR Page

Chapter II

210.1 (c) revised; interim 15981

210.2 (c-2) and (n) revised; interim 15981

(o)(1) amended; (v) and (w) added; final 18565

(b-3)(5) removed; (b), (b-1), (b-3) introductory text, (b-3)(1), (b-4), (h-6) and (q-2) revised 18844

(d) removed; (i-2) added; (j), (k), and (n-3) revised; interim 31374

210.3 (b) and (b-1) revised; emergency 14132

210.4 Revised; interim 15981

210.4a Removed 18563

210.5 (c) added; interim 15981

210.5a Amended 18563

210.6 (a) through (h) revised; emergency (effective date pending in part) 14132

210.7 OMB number 745

(a) amended 15981

(b) revised; interim 31374

210.8 (a) amended; (b) revised; (c) removed; interim 15981

(e) introductory text revised; (e)(17) added; interim 15982

(e) (1) and (2) revised; (e) (10), (11), and (14) amended; interim 31374

210.8a (f) amended; interim 31374

210.10 Implementation deferred 28909

(a)(5) revised 35166

(a)(3) table amended 51550

210.11 OMB number 746

(a), (b), and (c) introductory text amended; (c)(1) through (3), and (d) removed; (e) and (f) redesignated as (d) and (e); new (d) revised; interim 31374

210.13 (b-1) revised; interim 15982

(a) and (b) amended; interim 31375

7 CFR—Continued

Chapter II—Continued	47 FR Page
210.14 (d) revised; (d-1) removed; (g)(1) amended; interim	15982
(a)(1) revised (effective date pending)	18563
(a)(3) introductory text, (a)(3)(iii), (a)(3)(vii) introductory text and (a)(4)(i) introductory text amended; (a)(3)(iv)(A); (a)(3)(v)(C), (a)(3)(vii)(C) and (D) revised	18845
(a-1) (text) and (g)(3) revised; interim	31375
210.15 Revised; interim	31375
210.15a Removed; interim	15982
210.15b (a) amended; interim	31375
210.16 (i) added; emergency	14133
210.17 (a)(4) amended	14134
(a)(1) amended (effective date pending)	18564
210.20 (a) amended	17466
215.2 (v)(1) amended; (bb) and (cc) added; final	18565
215.3 (c) revised; emergency	14133
215.6 OMB number	746
215.7 OMB number	745
215.8 (a) removed; (b)(1) amended	14134
215.11 OMB number	745
(a) removed	18564
215.12 OMB number	745
(h) added; emergency	14133
215.13 (a)(4)(i) amended	14135
(a)(1) amended (effective date pending)	18564
215.14 OMB number	745
220.2 (u)(i) amended; (z-1) redesignated as (aa); (bb) and (cc) added; final	18565
(o-1), (o-2), and (t-1) added; (p) revised; interim	31375
220.3 OMB number	745
(b) and (c) revised; emergency	14133
220.7 OMB number	745
(d)(2) and (e)(9), (10), and (13) amended; (e)(1) revised; interim	31375
220.8 OMB number	746
220.9 OMB number	746
(b) and (e) amended; (c) and (d) revised; interim	31375
220.11 (c) revised; interim	31376
220.12 (a) amended; interim	31376
220.13 OMB number	746

7 CFR—Continued

Chapter II—Continued	47 FR Page
(f)(1) revised; (f)(2) removed (effective date pending)	18564
(i) revised; (j) redesignated as (k); new (j) added; interim	31376
220.14 OMB number	746
(i) added; emergency	14134
220.15 (a)(4) amended	14135
(a)(1) amended; (b) removed (effective date pending)	18564
220.16 OMB number	746
225 Revised (effective date pending in part)	6793
Authority citation corrected	15309
225.8 (b)(3) corrected	15309
225.11 OMB number	746
225.18 (b)(2) corrected	15310
225.19 OMB number	746
225.20 OMB number	746
225.21 (d) amended; (d)(1) and (2) added	58212
225.22 OMB number	746
226 Revised	36527
226.2 Corrected	46072
226.6 (h)(1) and (k) corrected	46072
226.12 (a)(3)(i), (ii), and (iii) revised; interim	3541
(a)(3)(i), (ii), and (iii) revised; (a)(iv) added	27544
(a)(3)(ii) correctly revised	46072
226.14 (a)(3) correctly revised	46072
226.15 (b)(6) corrected	46072
226.16 (d)(4)(ii) revised; interim (effective date pending)	3541
(d)(4)(ii) revised	27544
(d)(4)(i) correctly revised	46072
226.20 (c) (2) and (3) corrected	46072
226.23 (e) corrected	46072
226.26 (a) and (d) correctly revised	46072
227 Authority citation	22072
227.4 OMB number	746
227.30 OMB number	746
(f)(3) revised	22072
227.31 OMB number	746
230 Removed	14135
230.12 OMB number	746
230.14 OMB number	746
230.15 OMB number	746
235.2 (o)(1) amended; (u) and (v) added; final	18565
235.4 (a), (c), (d), and (e) revised	18567
(b)(3)(ii) revised; (b)(3)(iv) amended	18845
235.5 Revised	18567

7 CFR—Continued

47 FR Page

Chapter II—Continued

235.8 (b) amended.......... 18567
235.11 (a) amended.......... 14135
240 Revised; interim.......... 15982
245.1 (a) revised; interim.......... 31852
245.2 (a) redesignated as (a-1) and amended; new (a), (a-2), (a-3), and (d-2) added; (e) amended; interim.......... 31852
245.3 (a) and (c) amended; (d) removed; interim.......... 31852
245.4 OMB number.......... 746
245.5 (a)(1) revised; interim.......... 31852
  (a)(2) amended; interim.......... 31853
245.6 (a) introductory text and (2) amended; (a)(1) and (b) revised; (d) added; interim.......... 31853
245.7 OMB number.......... 746
245.9 (b)(1) amended.......... 14135
245.10 OMB number.......... 746
  (f) added; interim.......... 31853
245.11 (g) added; interim.......... 31853
246.4 (a)(14)(v) revised.......... 23633
246.8 Deferred to 12-31-82.......... 20108
246.10 Revised.......... 23633
246.12 (c)(1) revised; (d) added... 23637
246.15 OMB number.......... 746
246.18 (a) amended.......... 23637
246.19 (c)(1)(ii) revised.......... 23637
246.23 (a) amended.......... 23637
247.3 OMB number.......... 746
247.5 OMB number.......... 746
247.6 OMB number.......... 746
247.8 OMB number.......... 746
247.9 OMB number.......... 746
247.13 OMB number.......... 746
247.14 OMB number.......... 746
247.15 OMB number.......... 746
247.19 OMB number.......... 746
247.20 OMB number.......... 746
247.21 OMB number.......... 746
250.1 (b) (6) and (17) amended.... 15985
250.3 Amended.......... 15985
250.4 (b)(2) and (b)(5)(i) revised; (b)(3) amended.......... 15986
250.5 OMB number.......... 745
250.6 OMB number.......... 745
250.8 OMB number.......... 745
  (a) amended.......... 15986
250.13 (h) heading revised.......... 15986
250.15 OMB number.......... 745
253 Redesignated from Part 283.......... 14137
253.2 (i) added.......... 14137
253.4 (d) revised.......... 14137
253.5 (a)(1) introductory text revised; (a)(1)(iii) removed.......... 14137

7 CFR—Continued

47 FR Page

Chapter II—Continued

  (m) revised.......... 19665
253.7 (a)(10)(ii) and (b)(3)(iii)(A) revised.......... 14137
253.9 (h)(3) removed; (h)(4) redesignated as (h)(3).......... 14137
271.1 (b) amended; interim.......... 18569
  (b) amended.......... 23461
271.2 Amended.......... 17762, 23461
  Amended; interim.......... 22697, 56470
  Amended; interim.......... 55908
  Corrected.......... 57668
271.4 (a)(3) removed; (a)(4) through (8) redesignated as (a)(3) through (7).......... 52333
271.5 (b) revised.......... 35168
271.6 (a)(1) amended.......... 53315
  (b)(1)(i) and (vi) amended; eff. 1-27-83 (section incorrectly cited as 271.2).......... 57668
271.7 (b), (d)(1)(ii), (2)(i), and (3) revised.......... 52333
  (g) revised.......... 53315
  (e)(2)(ii) amended; interim.......... 53830
272.1 (d)(1) revised; (g)(27) added (effective date pending in part).......... 17762
  (g)(34) added.......... 19942
  (g)(41) added.......... 20741
  (g)(36) added; interim.......... 22697
  (g)(33) removed.......... 27546
  (f) amended; (g)(44) added.......... 35168
  (g)(43) added.......... 40398
  (g)(42) added.......... 44696
  (g)(47) added; interim.......... 49012
  (g)(48) added; interim.......... 50180
  (g)(40) added.......... 50183
  (g)(49) added; interim.......... 50683
  (g)(5) added; interim.......... 51552
  (g)(1)(iv)(B) amended; (g)(1)(ix) removed; (g)(1)(x) redesignated as (g)(1)(ix); (g)(10) revised.......... 52333
  (g)(5) revised; (g)(12) removed...63315
  (g)(53) added; interim.......... 53830
  (g)(54) added; interim.......... 55467
  (g)(55) added; interim.......... 55908
272.2 (a)(2) amended.......... 44696
  (a)(2) revised; (c)(1)(i) amended.......... 52333
272.3 (c)(7) added; interim.......... 22697
  (c)(8) added; interim.......... 50180
  (d)(1)(ii) revised.......... 52334

7 CFR—Continued

47 FR Page

Chapter II—Continued

(a)(5), (c)(5) and (6) removed; (a)(6), (7), (c)(7) and (8) redesignated as (a)(5), (6), (c)(5) and (6); (d) revised.................... 53315
272.4 (b) removed; (c) through (f) redesignated as (b) through (e)................................ 35168
  (b)(1) and (2) introductory text revised.......................... 52334, 57669
  (d) introductory text and (3) removed; (d)(1) revised................ 53315
  (b)(1), (2)(iii), (4), (5), (c)(2), (d)(1)(i), and (3) corrected....... 57668
272.5 Removed; new 272.5 redesignated from 272.6.................... 53315
272.6 Revised................................ 52334
  Redesignated as 272.5; new 272.6 redesignated from 272.7.. 53315
272.7 Redesignated as 272.6; new 272.7 redesignated from 272.8 and (b), (e), and (n) revised and (o) removed... 53315, 53316
272.8 (h) revised............................ 20741
  (c) amended................................ 52334
  Redesignated as 272.7 and (b), (e), and (n) revised and (o) removed........................... 53315, 53316
  (h) corrected................................ 57668
273.1 (e) introductory text revised; (f)(1)(i) and (4)(iii) amended.................................... 17762
  (b)(6) revised................................ 44696
  (a), (c), and (g) revised................. 52334
  (a)(1)(iv) and (3)(iv) added; (a)(3)(i) revised; interim.......... 55908
273.2 (e)(1), (f)(1)(ii)(B), (g)(1), and (h)(1)(i)(D), (2)(i)(A), (3)(i), and (4)(iii) amended; (f)(1)(ii)(C), (E), and (F), and (h) introductory text revised.. 17762
  (f)(7) removed; (f)(8) and (9) redesignated as (f)(7) and (8); new (f)(7) and (k)(1)(iii)(A)(*3*) revised....................................... 19942
  (i)(4)(iii) revised.......................... 20741
  (k) introductory text and (2)(ii) introductory text revised........ 27546
  (b) revised...................................... 35168
  (f)(7) and (k)(1)(iii)(A)(*3*) revised; (f)(9) added...................... 50183
  (f)(9)(vi) correctly designated.... 52692

7 CFR—Continued

47 FR Page

Chapter II—Continued

  (e)(2) introductory text, (f)(1)(v)(B), and (i)(4)(i) amended; (f)(2) introductory text and (ii)(B), (3), (4)(ii), (5)(ii), (6), (8)(i)(C), and (i)(4)(ii) revised........................ 53316
  (i)(1), (3)(i) (text) and (iii) revised; (i)(4)(i) amended; interim.. 53830
  (f)(2)(i) revised; interim.............. 55908
  (f)(1)(ii)(A) amended; eff. 1-27-83.. 57668
  (f)(1)(ii) (C), and (E) corrected.. 57668
273.3 Amended.............................. 53317
273.4 Revised (effective date pending in part)........................ 17763
  (a)(4) and (5) corrected.............. 57668
273.5 (b)(1)(iii) and (iv) revised; (b)(1)(v) added; (b)(3) and (4) removed; (b)(5) redesignated as new (b)(3); interim............... 55909
273.6 (g) added.............................. 50184
  (a), (b)(2) introductory text and (ii), (c), (d), and (e) revised; (b) heading and (b)(2)(i) amended...................................... 53318
273.7 (j) revised............................ 52335
273.8 (d) introductory text and (i)(1) amended; (e)(11)(viii) removed; (e)(11)(ix) redesignated as (e)(11)(viii); (e)(11)(ix) and (x) and (13) added; (h)(1)(iii) and (vi) and (4)(iii), (i)(2)(iii), and (j) revised.. 17764
  (j) revised...................................... 44696
  (c)(3) added; interim.................... 55467
  (a) and (e)(2) amended; (c)(1) revised; interim......................... 55909
  (d) introductory text, (e)(11)(ix), (h)(1)(vi), and (4)(iii) corrected.......... 57668
273.9 (b)(1)(iv) and (c)(10) (ix) and (x) added; (b)(3) and (c)(10)(iii) revised..................... 17765
  Appendixes A and B revised....... 17977
  (a)(1)(i), (2)(i), (4), (d)(1), (5), and Appendixes A through D amended; interim..................... 18569
  (c)(5) introductory text amended.. 35169
  (b)(3) amended............................ 44696

7 CFR—Continued

47 FR Page

Chapter II—Continued

(a)(4) and (d) (1), (4), and (5) revised; Appendixes A, B, C, and D removed.......................... 46486
(d)(4) corrected.......................... 49627
(d)(6) revised; interim................. 51552
(a) introductory text, (1), (2), and (3), (d)(2), (3) introductory text, (5), (7), and (8) revised.. 52335
(b)(4) redesignated as (b)(5); new (b)(4) added; interim........ 55467
(a) introductory text, (1), and (2) revised; (a)(3) introductory text, (i), and (ii) amended; interim....................................... 55909
(b)(1)(iv) and (c)(10)(ix) corrected.. 57668
(d)(3) introductory text and (d)(5) introductory text (paragraph incorrectly cited as (d)(4))..................................... 57669
273.10 (e)(4)(ii) revised................. 11816
(b) revised....................................... 17765
(e)(4)(i) and Appendix A amended; interim..................... 18569
(a)(1) through (4) revised........... 20742
(e)(2)(ii)(A) and (4)(ii) and Appendix A revised....................... 40398
(e)(1)(i)(E) and (4)(i) amended; Appendix A removed................ 46486
(e)(1)(i) introductory text, (A), and (B), (e)(2)(i), (ii)(B) and (C), (iii), (iv), (v), (vi)(B), (C), and (D) revised; (e)(1)(i)(E), (F), and (G) amended............... 52337
(e)(3) introductory text, (i) introductory text and (ii) revised; (e)(3)(vi) removed; (e)(3)(vii) and (viii) redesignated as (e)(3)(vi) and (vii); new (e)(3)(vi) amended; interim... 53831
(a)(1)(ii) and (iii) introductory texts and (2), and (e)(2)(i)(A) and (C), (iv), (vi)(A) and (B) amended; (a)(1)(iii)(C) and (e)(2)(i)(B), (ii)(B) and (C), and (iii) introductory text revised; interim............................. 55909
Appendix B removed; eff. 1-27-83... 57668
(e)(2)(i)(A) corrected................... 57669

7 CFR—Continued

47 FR Page

Chapter II—Continued

273.11 (a)(2)(ii) amended; (a)(4)(ii) removed; (a)(4)(iii) redesignated as (a)(4)(ii) and revised; (c) heading, introductory text, and (5), (d), (e)(5), and (f)(5)(i) and (ii) revised; (f)(5)(iii) added......................... 17765
(c) revised...................................... 44696
(a)(2)(iii), (a)(4)(ii)(C), (b)(1)(iii) (c)(3) revised; (c)(4) amended (revisions to (a)(4)(ii)(C) and (c)(3), and (c)(4) removed at 47 FR 57669)... 52337
(h) redesignated as (i); new (h) added; interim........................... 55467
273.12 (a)(2) revised; (a)(3) redesignated as (a)(4) and revised; (a)(3) added..................... 17766
(e) introductory text and (1)(i) revised... 52338
273.13 (a)(3) added; interim........ 55910
273.14 (b)(3) revised...................... 27546
273.16 (d)(1) through (9) redesignated as (d)(2) through (10); (d) introductory text redesignated as (d)(1) and revised.. 17766
273.18 (b)(3)(ii) revised; (e)(1)(iii) added......................... 17767
(b)(3)(ii) corrected....................... 57669
273.19 Removed............................ 35169
273.20 (a), (b), and (c) corrected.. 57669
273.21 Added; interim................... 22697
(b)(2)(i)(B) and (b)(2)(ii) corrected; (incorrectly published as (b)(2)(i)(A))........................... 57669
273.22 Added................................. 44697
274.1 (b)(6) added; interim.......... 49012
(a) revised....................................... 53318
274.2 (i) revised.............................. 20743
(e)(5) revised................................ 53318
(h)(4) removed; (h)(1) amended; (i)(4) added; eff. 1-27-83.... 57669
274.3 (c)(4) added; interim........... 50683
(c)(1) introductory text amended; eff. 1-27-83.......................... 57669
274.7 (c) introductory text amended.................................... 35169
274.8 (b)(1)(i) and (3) revised...... 17767
(b)(2) amended; eff. 1-27-83....... 57669
274.10 (d) revised........................... 17767
275.3 (b) revised; eff. 1-27-83...... 57669

7 CFR—Continued

Chapter II—Continued

	47 FR Page
275.8 (b)(2)(xii) revised; interim	53831
275.11 (f) amended; eff. 1-27-83	57670
276.1 (a)(1) amended; eff. 1-27-83	57670
276.2 (b)(3)(iii) and (iv) redesignated as (iv) and (v); new (b)(3)(iii) added; interim	49012
(b)(2)(v) redesignated as (b)(2)(vi); new (b)(2)(v) added	50683
277.4 (b)(1) revised	25498
277.15 (b) revised	41096
(b) technical correction	46073
277.18 Added	25499
277 Appendix A amended	52338
278 Nomenclature change	23461
278.1 (e) amended	17768
(n) revised	35169
(h) through (n) redesignated as (i) through (o); new (h) added; new (k) revised; interim	56470
278.6 (f) removed; (g) through (k) redesignated as (f) through (j); (a), (e), new (f), and (g) revised; interim	56471
278.8 (a) revised; interim	56472
279.6 (b) revised; interim	56472
279.7 (a) revised; interim	56472
281.2 (b) amended	52338
282.2 Revised	46486
282.5 Revised	46487
282.18 Added	536
283 Redesignated as Part 253	14137
283.5 OMB number	746
283.7 OMB number	746
283.8 OMB number	746
283.9 OMB number	746
284 Added	28068
285 Added; interim	10769
Added; final	32409
285.11 Added; interim	18569

1983

7 CFR

Chapter II

	48 FR Page
210.2 (b) through (b-4) revised; (h)(6) through (8) redesignation as (h)(7) through (9) final; (h-6) and (q-2) revised; final	27889
(d) removal, (i-2) addition, and (j) and (n-3) revisions confirmed; (k) revised	40196
210.4 (e) added	20896
210.6 (i) and (j) removed	194
210.7 (b) revision confirmed; (b) amended	40196
210.8 (e)(7) revised	19354
Technical correction	20896
(e)(18) revised; final	27890
(e)(1) and (2) revisions and (e)(10), (11), and (14) amendments confirmed	40196
210.8a (f) amendment confirmed	40196
210.11 (a), (b), and (c) amendments, (d) removal, (e) and (f) redesignation as (d) and (e), and new (d) revision confirmed; (a), (b), and (c) amended	40196
210.13 (b) corrected	10292
(b) amended	20896
(a) and (b) amendments confirmed	40196
210.14 (a)(2), (3), and (4) and (g)(4) revised; (a)(5) through (7) added (effective date pending in part)	27890
(g)(3) revision confirmed; (a-1) revised (effective date pending)	40196
210.15 Revision confirmed	40196
210.15b (a) amendment confirmed	40196
210.16 (a), (b), and (e) revised	27892
210.17 (a)(4)(i) correctly amended	194
(f) revised; final	27892
210.19a Revised	19354
Technical correction	20896
210.21 (a), (b), (c), and (f) revised	194
210 Appendixes A and B amended	195
Appendix A amended	780
Appendix A amendment implementation date deferred to 9-1-84	57259
215.4 (c) added	20896
215.10 (c) added	20896
215.14a Revised	19355
Technical correction	20896
215.16 (a) through (d) revised	195

7 CFR—Continued

Chapter II—Continued	48 FR Page
220.2 (o-1), (o-2), and (t-1) additions confirmed	40196
(p) revised	40197
220.4 (d) added	20896
220.7 (e)(6) revised; (f) redesignated from 220.18 (c)	19355
Technical correction	20896
(d)(2) and (e)(9), (10), and (13) amendments and (e)(1) revision confirmed	40196
(e)(1)(ii) revised	40197
220.9 (b) and (e) amendments and (c) and (d) revisions confirmed	40196
(a) amended	40197
220.11 (d) added	20896
(c) revision confirmed	40196
220.12 (a) amendment confirmed	40196
(a) amended	40197
220.13 (h) removed	19355
Technical correction	20896
(j) redesignation as (k) and new (j) addition confirmed	40196
(i) revised	40197
220.16 Revised	19355
Technical correction	20896
220.18 Removed (paragraph (c) redesignated as 220.7 (f))	19355
Technical correction	20896
220.21 (a), (b), (c), and (f) revised	195
220 Appendixes A and B amended	195
225.6 (c), (d), and (e) removed; (f) and (g) redesignated as (c) and (d)	29123
Authority citation corrected	38601
225.10 (c) amended	20897
225.11 (c)(6) amended	20898
225.21 (d) introductory text amended; (d)(1) and (2) added (republication)	375
225 Appendix A added	781
Appendix A corrected	2115
Appendix A addition implementation date deferred to 9-1-84	57259
226.2 Amended	21529
Amended; interim	35595
Amended; final	41142
226.6 (e)(8) added; interim	35596
226.7 (d) amended	20898
(b) amended	21530
226.9 (c) redesignated as (d) and revised; new (c) added	21530

7 CFR—Continued

Chapter II—Continued	48 FR Page
226.10 (c) amended	20898
226.11 (d) amended	21530
226.15 (e)(10) amended; (e)(11) added	21530
226.16 (h) amended	21530
226.20 (b)(3)(ii) corrected	40197
226.23 (e) and (f) revised; (h) added; interim	35596
226.24 Revised	41142
226.26 (b), (c), and (e) corrected	40197
226 Appendix A added	781
Appendix A corrected	2115
Appendix A addition implementation date deferred to 9-1-84	57259
227.30 (a) amended	29123
Authority citation corrected	38601
(c) amended	39213
227.31 (c) amended	29123
Authority citation corrected	38601
227.37 (b)(6) amended	29123
Authority citation corrected	38601
(b)(6) revised	39213
235.2 (e), (j), (m), and (n) removed	19355
Technical correction	20896
235.4 (b)(3) revised	27892
(d) amended	29123
Authority citation corrected	38601
235.6 (a-1) revised; final	27892
235.7 (c) amended	195
(b) amended	27892
235.8 (a) amended	195
235.9 Revised	19355
Technical correction	20896
235.10 Removed	19355
Technical correction	20896
235.11 (b) and (e) revised	27892
245.2 (a-3) amended; (k) added; interim	12510
(a-3) amendment and (k) addition comment time extended	32323
245.5 (b) revised	19355
Technical correction	20896
245.6a Added (effective date pending in part)	12510
Addition comment time extended	32323
245.7 (b) added; interim	12511
(b) addition comment time extended	32323

7 CFR—Continued

48 FR Page

Chapter II—Continued

245.10 (f) removed; interim (regulations transferred to 245.6a (d))....12511
(f) removal comment time extended....32323
245.11 (g) removed; interim (regulations transferred to 245.6a (d))....12511
(g) removal comment time extended....32323
246.2 Amended....29124
Authority citation corrected....38601
246.4 (c) removed; (d) and (e) redesignated as (c) and (d); new (c) amended....29123
Authority citation corrected....38601
247.2 Amended....29124
Authority citation corrected....38601
247.5 (c) removed; (d) and (e) redesignated as (c) and (d)....29123
Authority citation corrected....38601
247.10 (b) revised....46732
250.1 (b)(21) added....19016
250.3 Amended; interim....27719
Correctly amended; interim....28611
250.6 (j) revised....19016
(f) introductory text amended; (w)(3) removed....29123
Authority citation corrected....38601
250.13 (b) amended....19016
250.15 Heading revised; interim....27719
Heading correctly revised; interim....28611
250.16 Added; interim....27719
Correctly added; interim....28612
251 Added; interim....19006
Revised; interim....55991
253.5 (a)(1)(ii) revised....29123
Authority citation corrected....38601
254 Added; interim....1170
271.1 (b) amended....16832
271.2 Corrected....11926
Amended....16832
Amended; interim....23801
Amended; eff. 1-9-84....54964
271.6 (b)(1)(i) and (vi) corrected....22130
(b)(1)(i) and (vi) amendment eff. date corrected to 1-27-82....22131
272.1 (g)(57) added; interim....1173
(g)(45) added....6315
(g)(58) added....6853
(g)(59) added; interim....9214
(g)(60) revised; interim....13957

7 CFR—Continued

48 FR Page

Chapter II—Continued

(g)(49) revised....15225
(g)(46) added....16830
Technical correction....20403
(g)(64) added; interim....23801
(g)(66) added....28192
(g)(36) added; final; eff. 1-9-84....54965
272.2 (a)(2) amended; interim....1173
(c)(1)(i), (2) introductory text, (3) introductory text, (e)(2)(i), and (3) revised....6315
(a)(2) corrected....22130
272.3 (b)(1) through (4) and (c)(2) revised....6316
(a)(1)(ix) amended....16830
(b)(1) through (4) and (c)(2) revision effective date corrected to 3-14-83....22131
273.1 (b)(3) and (6) removed; (b) introductory text, (1), (2), (4), (5), and (7) redesignated as (b)(1) introductory text and (i) through (v); (b) heading and new (2) added....6854
(a)(1)(iv) amended; interim....9214
273.2 (j)(1)(i) revised; (j)(1)(ii) removed; (j)(1)(iii), (iv), and (v) redesignated as (j)(1)(ii), (iii), and (iv); new (j)(1)(iv) amended; interim....13958
Technical correction....20403
(i)(3)(i) heading correctly added; (i)(4)(i) corrected....22130
(f)(1)(i)(A) correction eff. date corrected to 1-27-82....22131
273.8 (j) revised....6854
(e)(11)(viii) removed; (e)(11)(ix) and (x) redesignated as (e)(11)(viii) and (ix); (e)(14) added....16830
273.9 (b)(3) revised....6854
(c)(10)(v) removed; (c)(10)(vi) through (x) redesignated as (c)(10)(v) through (ix); (c)(11) added (effective date pending)....16830
(d)(5) corrected....22130
(d)(6)(i) revised; (d)(6)(ii) through (vi) redesignated as (d)(6)(iii) through (vii); new (d)(6)(ii) added; new (d)(6)(vi) and (vii) revised....28192

7 CFR—Continued

Chapter II—Continued 48 FR Page

273.10 (g)(3) removed; (g)(4) redesignated as (g)(3) and introductory text and (i)(C) amended........6316
(f)(2) revised; (f)(3) amended; (g)(1)(i)(B) removed; (g)(1)(i)(C) and (D) redesignated as (g)(1)(i)(B) and (C); interim........13958
Technical correction........20403
(e)(2)(i)(A) correction and Appendix B removal eff. date corrected to 1-27-82........22131
273.11(c) revised........6854
273.13 (a)(2) amended........6316
(b)(7) and (10) revised........6855
273.16 Revised........6855
273.17 (a)(1) and (e) revised; (a)(2) redesignated as (a)(3); new (a)(2) added........16831
273.18 Revised........6861
273.21 (b)(2)(i)(B) corrected........22130
Revised; final; eff. 1-9-84........54965
273.22 (b)(3) and (e)(1)(i) revised; (g)(4) added; interim........1173
274.1 (d) added; interim........9214
274.2 (j) added........1175
(h)(1) amendment and (i)(4) addition eff. date corrected to 1-27-82........22131
274.3 (c)(4) revised........15225
(c)(1) corrected........22130
(c)(1) amendment eff. date corrected to 1-27-82........22131
274.8 (b)(2) amendment eff. date corrected to 1-27-82........22131
275.3 (b) revision eff. date corrected to 1-27-82........22131
(c)(7) revised; interim........23801
275.4 (c) revised; interim........23801
275.11 (f) amendment eff. date corrected to 1-27-82........22131
275.14 Heading revised; (a) and (b) amended; interim........23801
275.25 (c)(1)(i) and (iv), (2), (3), (d) heading, (1), (2), (3), (4) heading and (ii), (5)(i)(C), (E), and (F), (ii), and (6)(i) revised; (d)(4)(iii) and (5)(i)(G) removed; interim........23802
276.1 (a)(1) amendment eff. date corrected to 1-27-82........22131
276.2 (c) revised........6865
(b)(2)(v) revised........15226
277.4 (b)(2), (5), (6), and (7) revised; (b)(8) added; interim........23803

7 CFR—Continued

Chapter II—Continued 48 FR Page

277.15 (a), (c)(1), (2), (3), (5), (e) introductory text and (2) revised; (e)(1) introductory text amended; (e)(1)(iv) added........6865
278.1 (p) added........43291
278.9 Added........43292
282.4 (a) revised........29124
282.13 (c), (h), (i), and (j) redesignated as (c)(1), (i), (j), and (k); (c)(2), (e)(7), (8), and (9), and (h) added; (d), (e)(1), (f) introductory text and (2)(i) amended; (e)(6) and new (k) revised........29676
282.15 Removed........1175
282.19 Added........45009
285.2 (a) amended........23805
285.3 (b)(3)(i) and (ii) amended; (b)(3)(iii) added........23805
285.10 Redesignated from 285.11 and revised........16832
285.11 Redesignated as 285.10 and revised........16832
295 Revised........15226

1984

7 CFR

49 FR Page

Chapter II

210.4 (a) and (b) amended; (c) introductory text revised; (e) removed........18985
210.8 (e)(8) revised........18985
(f) redesignated from 210.19 (b)........18986
210.13 (b) revised; (b-1) amended........18985
210.14 (g)(1) and (2) revised........18986
210.19 Revised........18986
210 Appendix C added........18457
Authority citation corrected........45109
215.4 (a) revised; (b) amended; (c) removed........18986
215.7 (d)(5) revised........18986
(e) redesignated from 215.15 (d)........18987
215.10 (b) revised; (c) removed........18986
215.11 (c) revised........18987
215.15 Revised........18987
220.4 (a) revised; (d) removed........18987
220.7 (e)(7) revised........18987
220.11 (b) revised; (d) removed........18987
220.13 (b) revised; (b-1) removed........18988

7 CFR—Continued

Chapter II—Continued	49 FR Page
220.18 Added	18988
220.20 Removed; new 220.20 redesignated from 220.21	18988
220.21 Redesignated as 220.20	18988
220 Appendix C added	18457
Authority citation corrected	45109
225.4 (c) revised; (e) amended	2464
225.9 (h)(1) revised	14078
225.10 (c) revised; (d) amended	2464
225.11 (c)(2), (5), and (6) removed; (c)(3), (4), and (7) through (13) redesignated as (c)(2), (3), and (4) through (10); (c)(2), (4), and (5) revised	2464
225.15 (a) revised	2465
225.16 (e)(13) added	2465
225.19 (e) revised	2465
225.21 (b)(6) revised; (c) amended	14078
225 Appendix C added	18457
Authority citation corrected	45109
226.6 (d)(2)(i)(B) and (e)(1) amended	14078
(j) introductory text amended; (j)(11) added	18988
226.7 (d) revised	18988
226.10 (c), (d), and (e) revised	18988
226.18 (b)(10) added	18989
226.23 (b), (c)(5), and (d) amended	14078
226 Appendix C added	18457
Authority citation corrected	45109
235.7 (b) amended	18989
235.11 (b)(1) amended; (b)(2)(v) revised; (b)(3) through (6) and (d) and (e) redesignated as (b)(4) through (7) and (e) and (f); new (b)(3) and (d) added; new (b)(4) and (5) introductory text amended	18989
245.2 (a-3) and (k) revised	26034
245.5 (a)(1)(iii) revised; (a)(1)(iv) through (x) redesignated as (a)(1)(v) through (xi); new (a)(1)(iv) added	26034
245.6 (a) introductory text, (1) and (2) amended; (d) removed	26034
245.6a (a) introductory text and (3) revised; (a)(2) and (b) introductory text amended; (b)(4) removed	26034
250.1 (b)(21) revised	25615
250.3 CFR correction	19797
250.6 (j) revised	25616

7 CFR—Continued

Chapter II—Continued	49 FR Page
254 Revised	32756
271.2 Amended	6302, 22057, 50596
272.1 (g)(68) added	6302
(g)(69) added; interim	18462
(g)(63) added	39036
(c)(1) revised; (g)(62) added; eff. 1-14-85	48680
(g)(59) revised; eff. 1-22-85	49584
(d)(1) amended	50596
272.2 (a)(2) amended; (d)(1)(i) and (ii) and (e)(4), (5), and (6) redesignated as (d)(1)(ii) and (iii) and (e)(5), (6), and (7); new (d)(1)(i) and (e)(4) added	6303
(a)(2) and (c)(1)(i) amended; (b) and (c)(1)(ii) revised	50596
272.4 (d)(2) revised	50597
272.5 (b)(3) amended	50597
272.7 (c) amended; interim	18462
273.1 (a)(1)(iv) amendment confirmed	49584
273.2 (d) text redesignated as (d)(1) and amended; (d)(2) added	6303
273.7 (a), (b)(1)(iv) amended; (b)(1)(v) removed; (b)(1)(vi) through (b)(1)(ix) redesignated (b)(1)(v) through (b)(1)(viii) respectively; (f) introductory text revised; (g) text redesignated as (g)(1); (g)(2) added; (m), (n) introductory text and (n)(1) heading revised; (n)(1)(i) and (iii) removed; (n)(1)(ii) and (iv) redesignated as (n)(1)(iv), and (vii); new (n)(1)(i), (ii), (iii), (v), and (vi) added; new (n)(1)(vii) amended	39036
(g)(2) introductory text and (ii) and (n)(1)(v) corrected; (k)(2) and (n)(2) revised	50597
273.9 (b)(5)(i) amended; eff. 1-14-85	48681
273.10 (e)(4)(i) revised; interim	18462
273.11 (j) added; eff. 1-14-85	48681
273.12 (b)(1) amended; (f)(1) and (2) revised	50597
273.14 (b)(3) amended	50597
274.1 (d) revised; eff. 1-22-85	49584
274.3 (a) amended	50597
275.3 (c) revised	6303
275.4 (c) revised	6304
(c) amended	50597

7 CFR—Continued

49 FR Page

Chapter II—Continued

275.5 (a) introductory text revised....50597
275.8 (a) amended; (b)(1)(i) revised....50598
275.10 (a) amended; (b) revised....6304
275.11 Revised....6304
  (b)(1)(iv) and (2)(ii) corrected....14495
  (f)(2)(iv) removed; (f)(2)(iii) revised....50598
275.12 Revised....6306
  (g)(1)(i) introductory text corrected....14495
275.13 Revised....6309
275.14 Revised....6310
  (a) amended....50598
275.16 (b)(4) and (7) amended....50598
275.21 Revised....6310
  (e) amended....50598
275.25 (c) and (d) redesignated as (d) and (e); new (c) added; new (d) revised and new (e)(1), (2), (3), (4)(ii), (5)(i)(C), (E), and (F), (5)(ii), and (6) revised....6311
  (c)(5) amended....50598
276.3 (b)(1) revised....50598
277.4 (b)(2), (5), (6), (7), and (8) revised....6313
278.1 (h) revised; (k) confirmed and republished....22057
  (b)(4) redesignated as (b)(5); new (b)(4) added....28392
  (l) through (p) redesignated as (m) through (q); (b)(1)(iv) and new (l) added....32537
278.2 (a) revised; (d) amended....32538
278.5 (a) and (c) revised; (d) removed; (e), (f), and (g) redesignated as (d), (e), and (f)....32538
278.6 (a), (e), and (g) revised; (f) confirmed and republished....22057
  (h) revised....28393
278.7 (b) through (f) redesignated as (c) through (g); new (b) added....28393
  (a) and (f) revised....32538
  (f) correctly designated....50598
278.8 Revised....22058
278.9 Existing text designated as (a); new (b) added....32538
279.3 (a)(2) and (3) revised; (a)(4) added....28393
  (a)(3) revised; (a)(4) redesignated as (a)(5); new (a)(4) added....32538
  (a)(3) corrected....50598

7 CFR—Continued

49 FR Page

Chapter II—Continued

279.5 (a) and (c) introductory text revised....22058
279.6 (b) revised....22058
279.7 (a) revised....22059
  (a) amended....28393
  (a) corrected....29769
  (a) technical correction....32538
279.11 Added....32539
  Correctly designated....50598
285.2 (a) amended; eff. 1-22-85....49585
285.3 (b)(3)(i) amended; eff. 1-22-85....49585

1985

7 CFR

50 FR Page

Chapter II

210 Nomenclature change (OMB numbers removed)....53257
210.2 (c-3) revised; (c-4) removed....20547
210.15b (a) revised....20547
210.22 Added (OMB numbers)....53257
215 Nomenclature change (OMB numbers removed)....53258
215.17 Added (OMB numbers)....53258
220.2 (c-1) revised; (c-2) removed....20547
220.12 (a) revised....20547
225.24 Added (OMB numbers)....53258
226 Authority citation revised....19310
226.2 Amended....19310
226.6 (c) introductory text, (d)(3), (j) introductory text, (1), (3), and (9), (k), (m), and (n) amended; (d)(1)(i), (g), and (j)(4) revised; (d)(4) removed; (j)(12) added....8579
  (e)(8) added; final....19310
  (c) amended; eff. 1-2-86....49343
226.7 (c) and (i) amended....8580
  (i) amended....26975
226.8 (e) amended....8580
226.10 (a) and (b) revised....26975
226.14 (b) amended....8580
226.15 (a) amended....8580
226.16 (d)(4)(ii) revised; (j) removed; (k) redesignated as new (j)....8580
  (g) and (h) amended....26975
226.18 (b) introductory text amended; (b)(8) revised....8580
226.20 (a)(3) amended; (d)(2) heading revised; (o) added....8581

7 CFR—Continued

50 FR Page

Chapter II—Continued

226.23 (e), (f), and (h) revised..... 19310
(h) introductory text and (3) corrected.................................... 20197
226.27 Added (OMB numbers).... 53258
235.12 Added (OMB numbers).... 53258
245 Nomenclature change (OMB numbers removed)........ 53258
245.14 Added (OMB numbers).... 53258
246 Revised...................................... 6121
246.2 Corrected................................ 8098
246.3 (d)(3)(iii) corrected............... 8098
246.5 (b) corrected........................... 8098
246.10 (c)(1)(ii) table, (2)(iii), and (6)(i) corrected..................... 8098
246.11 (e)(2) corrected.................... 8098
246.13 (a) corrected.......................... 8098
246.27 (g) corrected.......................... 8098
250.3 Amended; interim............... 37167
250.15 (d)(4)(ii) revised................ 20198
250.16 Removed; interim............. 37167

7 CFR—Continued

50 FR Page

Chapter II—Continued

252 Added; interim........................ 37167
271.8 Added (OMB numbers)........ 2660
272.1 (g)(69) addition confirmed.. 13761
(g)(65) added................................ 20549
272.7 (c) amendment confirmed.. 13761
273.10 (e)(4)(i) revision confirmed.. 13761
(g)(3)(ii)(A) amended.................. 20549
273.13 (a)(2) corrected; CFR correction................................... 48741
274.8 (a)(6) revised........................ 20549
277.18 (c)(2)(vii)(A) amended; (c)(2)(vii)(B) removed; (c)(2)(vii)(C) redesignated as (c)(2)(vii)(B) and amended...... 20550
282.12 (l)(2)(i) introductory text revised; Appendix amended.... 20550

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